

This is a memorandum of a conference arising out of the application to the Treasury made by the plaintiff to receive the gold.

The Witness: What date is it, Mr. Burling?

Mr. Burling: This is dated April 4, 1935.

Mr. Gallagher: May I interrupt just a minute, 1080 Mr. Burling?

Are you sure this is out of the Uebersee, or could this be out of Mr. Kresel or Mr. Davis' files?

Mr. Burling: May the Record show that this came from "Blue folder, consecutive No. 22, marked "Gold-Angelegenheit, Mappe IV, 1. Klage (Complaint), etc., 2. Fritz von Opel, 3. Isidor I. Kresel, New York, 4. Davis, Polk, Wardwell, Gardiner & Reed, 5. Dr. E. Meier, Lies-tal, 6. Dr. I. Henggeler, Zurich, 7. Theodore Hoffacker & Co., New York, 8. Federal Reserve Bank, New York, 9. Treasury, Washington, 10. Ladenburg, Thalmann & Co., New York."

Mr. Gallagher: I do not think our stipulation covers anybody's memorandum as to what took place at some conference.

We merely stipulated as to the fact that these are our records.

Mr. Burling: Are you objecting or making a speech?

Mr. Gallagher: I am speaking to his Honor.

Mr. Burling: I submit that you should make an objection or else let me proceed with my examination.

Mr. Gallagher: I am recalling your statement to his Honor about the stipulation.

The Court: What is the state of the record? Is this offered in evidence?

Mr. Burling: Yes, Your Honor.

Mr. Gallagher: And I am objecting to a lot of state-
ments on the Treasury Department, which are in-
1081 corporated in this memorandum which Mr. Burling
is trying now to introduce.

Mr. Burling: If I may point out, this is a memorandum maintained in the files of the plaintiff corporation. I desire to read into the record the fact that the president of the corporation made a representation to the Treasury. Surely a representation to the Treasury, made by the plaintiff's own president, is binding on the plaintiff.

That is all I am trying to accomplish.

Mr. Gallagher: There is no signature on this copy you have handed us.

Mr. Burling: I am trying to read, if Your Honor please, the paragraph beginning on page 2 with the words—

May I not be interrupted by counsel.

Mr. Gallagher: His Honor is still considering the matter.

The Court: What is it you are offering?

Mr. Burling: I offer the document but if there is any difficulty about it, I will restrict it to the paragraph on page 2 which Meier, the president of the corporation, is reporting what he told the Treasury about the ownership of the plaintiff's shares.

Mr. Gallagher: Your Honor, our objection still goes to the point. Until Mr. Burling submits as to who this memorandum is signed by and who prepared it, we still
1082 have objection to it. The fact that it is in our corporate files, in my opinion, is meaningless as to its admissibility.

We are not denying the fact that the memorandum is in our files.

Mr. Burling: I will ask the witness if he can identify the signatures on the document.

By Mr. Burling:

Q. Will you look at this document and see if you can identify the signatures?

(The document was handed to the witness.)

May I meanwhile point out that it recites that those present were B. Bernstein, attorney of the Treasury Department, Doctor Eugen Meier, and Doctor Schlatter of the Swiss Embassy, and it recites that "Bernstein spoke English, I spoke German, Dr. Schlatter interpreted."—

Since I would take it that that made it clear that the "I" must be Doctor Meier.

By Mr. Burling:

Q. I ask you about the signatures which are on the last page, Mr. von Opel? A. It seems to be the signature of Mr. Meier. I am not sure of it, but it does seem possible.

You could compare it with other signatures in the files.

The Court: Well, I will receive it.

You say, it has already been testified that Doctor
1083 Meier was president of the corporation at that time.

Mr. Gallagher: We have no objection, Your Honor, if it is signed by Mr. Meier, but our difficulty is we did not know who it was signed by.

The Court: I understand the witness to say it was signed by him.

Mr. Burling: May I read again?

"Upon the question as to the stock holdings of Mr. F. von Opel I replied that I did not know since we had bearer shares. I knew positively that no American citizen and no person having residence in America was a stockholder.

"Mr. Bernstein insisted that it should be known to me whether Mr. von Opel had a controlling interest; I replied that a group of which Mr. von Opel was a member had a controlling interest but that I did not know the composition of that group.

"If my information was correct, that group also included other members of the von Opel family. The extent of the participation of Mr. F. von Opel was not known to me."

By Mr. Burling:

Q. Now, Mr. von Opel, have you ever seen this document before? A. I saw it in the files, yes.

Q. When did you see it first? A. Four to six 1084 weeks ago.

Q. Did Mr. Meier ever tell you that he had made representation such as I have just read to you, to the Treasury? A. No, I do not recollect that.

Q. Did you ever tell Mr. Meier that the shares of Uebersee were owned by a group? A. No.

Q. Have you any explanation as to how the president of Uebersee came to make a representation to the United States Treasury that Uebersee was owned by a group of which you were a member? A. Because these shares were bearer shares, and he had no possibility of establishing correctly who was the owner.

Q. In your opinion, was his statement to the Treasury correct or incorrect? A. As far as he could know—

Q. Will you answer my question? A. I think it was correct, yes.

Q. That is, you think it is correct that at the date of this conference— A. He mentioned—

Q. Wait a minute, please.

April 4, 1935, it was correct that the Uebersee shares were held by a group of which you were a member? 1085 A. No, he did not say so.

Q. Well, I will read it to you again:

"I replied that a group of, which Mr. von Opel was a member, had a controlling interest."

Now, is that statement correct or incorrect?

A. But why don't you read the first sentence, Mr. Burling?

Q. Is that statement correct or incorrect? A. It has to be read together with all the other statements.

Q. Well, I understand that he said he was not certain but Mr. Meier states in this memorandum that he had told

the Treasury officials, "A group of which Mr. von Opel was a member had a controlling interest," and you say that is correct? A. No, I do not say that. I say you must read it altogether.

Q. Well, how do you read it altogether so that it is not incorrect? A. Please read the first sentence.

Q. I have read it. You read it now and tell me how it is not incorrect. A. "I replied, as we have already stated, by cable that he"—meaning myself—"is a share holder"—

Q. Where do you see this? A. Paragraph first.

1086 Q. That does not say he was the shareholder. It says he was stockholder, does it not? A. "He is stockholder", yes.

Q. I see— A. "Depositor of securities and he advises the corporation in technical matters."

Q. The statement that the corporation was owned by a group of which you were a member, how is that correct? A. Mr. Meier had no possibility of finding out who owned those bearer shares.

Q. So your testimony is that the president of the corporation, when being questioned by the United States Treasury, made representations of fact when he had no possible way of knowing what the facts were. Is that right? A. That is what he stated here.

Q. Mr. von Opel, you can read the words; can you not? A. Yes.

Q. "A group of which Mr. von Opel was a member, had a controlling interest." A. But don't forget about the first sentence.

Q. I read the first sentence. I am talking about this sentence. A. And please read the second para-
1087 graph, too.

Q. Yes. A. You are just picking out one sentence out of the group.

Q. Yes, but that one sentence either is true or it is false, or else it is a statement of fact made by a man who

does not know anything about it whatever. A. Please, read the entire paragraph, Mr. Burling. You are pulling out just one sentence out of a half a dozen.

Q. Of course I am, and I want to know what does that sentence mean to you, in the context or out of the context. What does that sentence mean to you? Who is the beneficial owner of the shares? A. I can not say that. I have to read the full letter, not just one line.

Q. Would you say that you apply the same techniques in reading this that you have applied in construing Plaintiff's Exhibit No. 5? A. I always try to understand a letter fully. And I think it is impossible to just take one sentence and just read this one sentence.

Q. Is there anything in here which in any way explains a way the fact that Meier represented to the Treasury that Uebersee was owned by a group, of which you were a member? A. He hadn't even any contact with me, and was not in Switzerland. I met him in New York and I told him the facts in New York.

1088 Q. Do you think he came back to the Treasury and said he had been mistaken? A. I don't know whether he did it or not, but we filed—I think he made an affidavit, didn't he?

Q. I do not know. A. Well, yes, you find this in the Gold case book. Why do you overlook this fact?

Q. Did Meier ever file an affidavit in which he said he misrepresented the facts or had been wrong when he told Bernstein of the Treasury— A. He filed a complete affidavit.

Q. No, wait a minute. Did he ever say he had been wrong in the course of this conversation with Bernstein?

A. As far as I know it was filed with the same part of the Treasury Department.

Q. Sure, but that does not take back the statement that he made to Bernstein, does it? A. I think definitely it does.

Q. You think it does.

Now, it goes on to say:

"If my information was correct, that group also includes other members of the von Opel family."

He said that, didn't he? A. Yes.

Q. Now, as a matter of fact, Meier's affidavit did 1089 not take back his oral misrepresentation at the Treasury, did it? A. I didn't read it.

Q. I want to read with you the following—I am reading from page 26 of the record in the Gold case, folio 77:

"It has always been my understanding that Mr. Fritz von Opel, a German citizen and resident of Sanct Moritz, Switzerland, either owned personally or held for members of his family a substantial number of shares of Uebersee Finanz-Korporation, A. G., but I have no personal knowledge on the subject."

A. But would you please leave me the record here.

Q. Sure, yes. A. May I read the next paragraph?

Q. Read anything you think will help you? A. "On May 14, 1935, I heard Mr. Fritz von Opel say that he was the owner of substantially all the stock of said corporation, subject to the right of usufruct reserved in his father Wilhelm von Opel."

Q. But he did not specifically do anything to take back the oral statement he had earlier made, did he? A. It was addressed to the Treasury Department.

Q. Now, coming to another topic you testified, I think, that Doctor Frankenberg was not with you in 1090 Montreal in 19— A. I didn't say that, Mr. Burling.

I said I didn't remember whether he was there. It was quite possible.

Mr. Burling: Your Honor, we have a telegram here in German and which we have hurriedly translated. I ask leave to have the English translation marked and for per-

mission to substitute a properly typed copy of the translation later.

The Court: All right.

Mr. Burling: This bears penciled corrections.

I do not want anything more than this signature in it.

Mr. Gallagher: Before you go on with the interrogation about it, I wanted to know what the contents of the communication is that you are going to inquire about it.

Mr. Burling: Since counsel keeps stopping me on the grounds they have not seen the documents, I want the record to show that this, again, is something which we borrowed from counsel and photostated and returned to them. It is in their possession.

In view of the great length of this examination, Your Honor, I think we should go ahead, and unless there is an objection to the translation, we should be permitted to proceed. If there is one, we can take it up then.

The Court: If there is any way to make time, I would be glad to do it.

1091 By Mr. Burling:

Q. Will you examine Defendant's Exhibit No. 67-A which is conceded to be a document taken from the records of the plaintiff corporation, and see if that refreshes your recollection as to whether Frankenberg was with you in Montreal? A. Yes.

Q. Was he? A. Yes, apparently.

Mr. Burling: I offer 67 and 67-A.

(The documents referred to were marked and received in evidence as Defendant's Exhibits Nos. 67 and 67-A.)

By Mr. Burling:

Q. Did you have a conversation over the phone with Mr. Houghland in late August, 1939, in the course of which

you said to him, "Your refusal to come to Germany is foolish. There will not be any war. We are just going to take a little slice off Poland, and the British won't fight."

A. That is ridiculous. I did never make such a statement.

Q. Did not Houghland tell you that he would think it over and call you back in Germany the next day? A. That is very unlikely.

Q. Did not Houghland call you the next day and 1092 didn't you tell him again— A. Call me where, Mr.

Burling? Could you make that a little bit clearer to me?

Q. Somewhere in the neighborhood of Cologne? A. And when?

Q. I have fixed the date repeatedly. A. What is the date? Between the 25th of August—

Q. Around the 20th of August, 1939? A. After the 20th or before the 20th?

Q. Around the 20th. I do not know the exact date. A. What do you mean by "around." How many days around?

Q. Are you in any doubt as to whether you did or did not have this conversation with Houghland? A. Definitely not.

Q. You did not say to Houghland, again, on a second occasion, the day after a first conversation, that there would be no war? A. If I recollect correctly, I invited him to Switzerland at this time, and I told him—he was very scared that he might be surprised by war, and could not return to the United States.

Q. Are you not thinking of an invitation you made Mr. Guyette? A. At what time?

1093 Q. At about this same time? A. Where was Mr. Guyette at this time?

Q. In Lowell, Massachusetts. A. And you mean in August, 1939?

Q. No, around in the latter part of 1939? A. Now you mean and even say the latter part of '39. I could have invited him before it had broken out.

Q. Did you not write Mr. Guyette and tell him he could come by way of Italy and Switzerland? A. If he wanted to talk to me it is possible.

Q. And you urged him to come, did you not? A. I invited all my presidents of my corporations repeatedly.

Q. I am just asking if you are not confusing an invitation to Guyette with a telephone conversation with Houghland? A. I do not think so because I certainly had no telephone conversation with Mr. Guyette.

Q. And didn't you say to Houghland that he really ought to come to Germany and to meet your father because he was really working for your father? A. That is a ridiculous statement.

Q. Perhaps so, but did you make it? A. No, I did not make it.

Q. And didn't you say to him that it would be 1094 valuable both to your father and to Houghland for the two men to meet? A. No. Because if I had wanted them to meet, the best time was his trip to Germany in '37, and not any date before the outbreak of the war.

Q. You testified this morning that it was not your custom to make long distance telephone calls. Is that right?

A. Whenever I could I avoided it and used wires.

Q. In February, 1941, did you have a telephone conversation in West Palm Beach, Florida, with any person in Budapest, Hungary? A. I was asked by wire to telephone Budapest, and I didn't do it.

Q. You did not do it? A. No.

Q. Did you have any long distance telephone calls between Palm Beach—I believe I said West Palm Beach before—I meant Palm Beach— A. Yes. What was your question, did I have any—

Q. —telephone calls in February, '41, between Palm Beach and Hungary? A. No.

Q. You are sure of that? A. Yes, I am sure of it.

Q. At any rate you are sure, I suppose, that you
1095 did not talk for a half an hour on the trans-Atlantic
phone? A. That is fully impossible.

Q. Did you ever tell anybody that you had been talking
for half an hour to Hungary in February, '41? A. That
would have been an outright lie.

Q. I did not ask you that. I said did you ever tell any-
one that? A. No.

Q. Do you know a man named Calvin Houghland? A.
He is Mason Houghland's boy, yes.

Q. Do you know him? A. I met him once or twice, yes.

Q. Well, he visited you in Palm Beach, didn't he? A.
After his marriage he passed through Florida and stopped
a day in Palm Beach.

Q. And on that occasion didn't you talk to Hungary for
half an hour on the trans-Atlantic phone? A. It is an
invention. I never did such.

Q. Didn't you tell him that you had that day talked to
Hungary? A. I did not. That is fully impossible.

Q. You did not tell him that? A. No.

Q. You are absolutely certain? A. I am abso-
1096 lutely certain, and the best thing is you check the
record in Palm Beach and there you will find it.

Q. I believe you can permit me to direct the preparation
of this case. If you want to have your counsel check the
record you, of course, are at liberty to do that.

Now, have you ever engaged in any activities related to
production of bauxite? A. Yes.

Q. To the best of your knowledge and belief has Ueber-
see Finanz-Korporation in any way been involved in these
bauxite activities? A. Transdanubia is a corporation
which is a Hungarian corporation, and which I founded in
1935, and was owned by Uebersee.

Mr. Burling: At this point, if Your Honor please, I wish
to read defendant's interrogatories and plaintiff's answers
thereto.

By Mr. Burling:

Q. Did Transdanubia have any interest in any bauxite mines or bauxite mining rights at any time? A. Did Transdanubia, you mean?

Q. Yes? A. Yes, certainly.

Q. And you just now said that Transdanubia was 1097 owned by Uebersee, have you not? A. Yes.

Mr. Burling: If your Honor please, we asked at question 28: "State the nature of plaintiff's interest in any corporation, holding or owning bauxite mines in Hungary, at all times from October 5, 1931, to June, 1942."

And this is what we were answered:

"The plaintiff had no interest in bauxite mines or bauxite mining rights in Hungary at any time. The plaintiff has no interest in any corporation holding or owning bauxite mines or mining rights in Hungary from October 5, 1931, to June, 1942."

Mr. Ingoldshy: Your Honor, we will agree at this time that we were in error in making that reply. I must say that the mistake was not known to me until the present moment. I think that the reason for our statement will become perfectly apparent as the testimony develops on this.

The Court: Well, I guess we had better not argue it now. I will hear it later.

Mr. Burling: I want to point out further that the date of the interrogatories, the answer to the interrogatories, is November 26, 1948.

By Mr. Burling:

Q. You organized or caused to be organized a 1098 corporation called Transdanubia Bauxite? A. Yes, that is correct.

Q. And how were the shares owned? A. I think the corporation has a capital of—nominal capital of 300,000 pengos paid in, if I recollect correctly, were 90,000 pengos.

Q. Yes, and 100 percent of the shares of Transdanubia were held by Uebersee. Is that right? A. They were first—the corporation was founded by me. I held the shares first, and later on they appeared on the books of Uebersee.

Q. When were the shares transferred from you to Uebersee? A. I could not tell that offhand. The books will show. I think it must have been around '37 or '38.

Q. And have you any reason to suppose that Uebersee at any time thereafter, down to June 1942, divested itself of those shares? A. I think they still hold them up to the times they were written off.

Q. When were they written off? A. They were written off, I think, in 1946 as a total loss.

Q. So, until '46, from '38 to '46 plaintiff owned Transdanubia. Right? A. Yes.

1099 Q. Now, will you agree that 90,000 pengos—pengo that is the Hungarian unit of money, is it not? A. Yes.

Q. —was equivalent to approximately 78,000 Swiss francs? A. You mean 90,000 pengos are how many thousands and francs?

Q. 78,000? A. Yes. Those rates, they change from time to time. It is approximately correct, yes.

Q. Well, at the time you made the investment, that is approximately right? A. Yes.

Q. And is it not true that Transdanubia then acquired a half interest in certain mining rights, mining property, near Budapest? A. That is not correct, Mr. Burling.

Q. Please correct me? A. It is vice versa. I acquired those rights and later on transferred them to Transdanubia, to the corporation.

Q. When did you acquire the right? A. Around—well, that is hard to say. Before the end of '35.

Q. And the rights you acquired constitute a fifty 1100 percent interest in certain mining properties. Is that correct? A. You cannot express it this way. May I tell you?

Q. Please do. A. Around '34 or the beginning of '35 I went into Hungary and contacted the Hungarian Government and the Hungarian Government offered me some mineral rights on sites which the Hungarian Government owned. And at this time they were very eager to get capital in to build up some competition against Hungarian Swiss bauxite trusts, and I was given option by the Minister of Industry and Commerce for about 4 or 6 weeks, or you better call it "right of refusal"—

Q. Well, without going into the detailed history, you, in some manner or other in 1934 or '35, acquired mining rights, did you not? A. Mining rights is not the proper expression.

Q. Well, state what it is, please? A. It is mineral rights.

Q. Mineral rights? A. Mineral rights, yes.

Q. And where were those mineral rights located? A. In Hungary.

Q. Can you be more specific? A. Near Sumeg.

1101 Q. Will you spell that, please? A. S-u-m-e-g. It is a vicinity of Lake Balaton.

Q. And you acquired 50 percent of these rights and the other 50 percent were held by someone else? Is that right?

A. I have to explain that a little further. Some men who offered me those rights under an option agreement, transferred 50 percent of some small part directly to me without exercise of the option agreement.

Q. And in 1936 you transferred your rights to Transdanubia? A. Yes.

Q. And Transdanubia continued to hold those rights, at least until 1940, did it not? A. That is correct.

Q. And the other 50 percent of the rights ultimately came into the ownership of Giulini Brothers of Ludwig

shafen. Isn't that right? A. The owner, Koranyi, who owns those 50 percent, and who had given me this option agreement, delivered bauxite, made a contract of delivery with Giulini, say it was several hundred thousand pengos, and he stopped delivery, and they sued him for repayment, and in some way or other they owned or controlled these other 50 percent.

1102 Q. Now, on September 1, 1939, Transdanubia held 50 percent of these mineral rights and Giulini held the other 50. Is that right? A. It is not quite clear to me to which extent Giulini was the owner. I think they only had the power of exercising these rights as long as his loan given to Koranyi was not repaid.

Q. And bauxite is the ore from which aluminum is refined, is it not? A. Yes, definitely.

Q. And Giulini Brothers were one of the four or five largest producers of aluminum in Germany, were they not? A. Yes.

Q. And their plant was at Ludwigshafen? A. Yes.

Q. And is it not true that some mines were started which were named Edgar-Margot mines? A. The first mine which was started was Margot. That was a mine I opened and closed because it was not productive.

Q. Well, were there not some mines— A. And I think the Edgar mine, if I recollect, was a mine Mr. Koranyi started and had to let go.

Q. Now, after the original investment of 90,000 1103 pengos, Uebersee advanced additional sums to Transdanubia, did it not? A. Yes. It was as follows:

Mr. Koranyi had started to produce out of his Edgar mine, and he went broke and did not live up to his obligations and I didn't realize it at this time but I, as the co-owner of Koranyi, was held liable for all damages done, even unpaid wages of Koranyi.

Q. Well, at any rate, some 84,146.90 Swiss francs were lent to Transdanubia by Uebersee in the year 1939. Is not that so? A. Yes. I had to repay all these damages done.

Q. And that sum was increased in 1939 to 89,453.40 Swiss francs, was not it? A. I could not tell you that off-hand, but approximately those figures seem to be correct.

Q. Now, the bauxite mines continued to be operated at least until 1941, did they not? A. No, they did not operate.

Q. They did not? A. No. They had no capital to operate. That was the difficulty.

Q. I address your attention specifically to the day July 30, 1942? A. July!

1104 Q. July 30, 1941. Were the bauxite mines being operated on that day? A. I could not tell you.

Q. Did you swear on an affidavit on that day that the bauxite mines were being operated? A. I was asked it by some Miami hearing boards.

Q. I am coming to that. But did you swear on July 30, 1941, that the mines were being operated? A. At this time they were still owned by Transdanubia.

Q. That is not the question. The question is did you swear on that date that they were being operated? A. (No response)

Q. I show you an affidavit and ask you if this is your signature on it? A. That is my signature, yes.

Q. In this an affidavit which you submitted to the United States Treasury? A. May I see it?

Q. Yes.

(The affidavit was handed to the witness.)

A. I do not see that anywhere, Mr. Burling.

Q. I just asked you, Mr. von Opel, if you submitted this to the Treasury? A. That is possible, yes.

Q. At any rate, your executed it? A. Yes.

1105 Mr. Burling: I offer it in evidence.

(The documents referred to were marked and received in evidence as Defendant's Exhibit No. 68.)

By Mr. Burling:

Q. Did you swear—I am reading if Your Honor please from the bottom of page 4 and the top of page 5—"By far the greater part of the proceeds of the sale of the 10 percent of the Opel stock to General Motors have been invested in various American enterprises which I shall now mention.

"Besides these American interests, Uebersee has only a relative small investment consisting of a plantation in British East Africa, a part interest in a mine in Hungary which is operated under a five-year lease by Hungarians, and a House in Sanct Moritz, Switzerland."

A. Yes, that is correct.

Q. Now, does that refresh your recollection that as of that date the mines were being operated? A. The last I heard I think was in April or May, 1941, I had an exchange of wires with the Transdanubia corporation, and its two managers and they wanted me to invest capital so that they could go on deep mining—no, so they could go over to deep mining, and I refused it.

Q. Well, if you did not know whether or not the
1106 mines were being operated on July— A. They wired back that they needed funds. I replied that I would not give them any more funds and they, in turn, wired and said since they would be forced to sell out or lease, and send in another wire saying to them how could they lease, and I told them to do anything what was, in their opinion, the best thing to do, and I think the last suggestion was a five-year lease.

Q. Well, so that you did think, on July 30, 1941, that the mines were being operated? A. I was—

Q. Well, did you or did you not? Can't you answer that? A. I was under this impression.

Q. That they were, in fact, being operated? A. That, so to say, some managers had carried out what they had suggested two or three months previously. After that time I had no new knowledge.

Q. We will go on much faster if you will just answer my question.

Did you not think on July 30, 1941, that the mines were being operated? A. Not operated by Transdanubia.

Q. Well, were they being operated by anybody? A. By another party, that is possible.

Mr. Burling: I now offer, as admissible on its face, 1107 Defendant's Exhibit No. 69, which is a certified copy of an affidavit taken from the files of the Treasury Department.

By Mr. Burling:

Q. Now, this is an affidavit, is it not, Mr. von Opel, signed by Isidor Kresel, your attorney, and filed with the Treasury in your behalf? A. May I see it?

Q. Yes.

(The document was handed to the witness.)

I beg your pardon, I made a mistake. It was filed on behalf of the plaintiff corporation Uebersee, was it not? A. I will have to check that, please.

(The witness examined the document.)

Yes, I think it is, Mr. Burling.

Mr. Burling: All right, I offer it in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 69.)

By Mr. Burling:

Q. Now, Mr. Kresel did not have personal knowledge of the bauxite transactions, did he? A. I don't know, I don't think so, no.

Q. His affidavit was filed on the basis of what you told him about it, is that not true? A. I assume so, or what he heard from Uebersee in Switzerland.

Q. Was Mr. Kresel in communication with persons in Switzerland at this time? A. He was in frequent communication. At this time, I could not say.

Q. And the persons you referred to are officers of Uebersee. Is that right? A. Yes.

Q. At any rate, on October 16, 1941, Mr. Kresel swore as follows:

"The business"—that is to say, the business of Uebersee—"has not since January 1, 1939, nor is it presently affiliated with, owned by, or possessed of any interest in any other enterprise, foreign or domestic, (except as noted under Number "3" above) and except that it has a small investment in a plantation in British East Africa, a part interest in a mine in Hungary, operated under a five-year lease by Hungarians, and a house in St. Moritz, Switzerland."

So that as of October 16, Mr. Kresel was advised either by you or by plaintiff's officers, that bauxite mine was being operated by Hungarians under a five-year lease. Isn't that correct? A. That was the impression I was under after this exchange of cables which ended in either April or May of '41.

1109. By Mr. Burling:

Q. Going back to Uebersee, is it not true that Uebersee's loan to Transdanubia was increased to 102,360 francs in 1940? A. Without seeing the books, I couldn't answer this very well.

Mr. Burling: I ask that a photostat of book called "Inventurenbuch", which is one of the books of account of the plaintiff, which I believe is conceded—

Mr. Ingoldsby: Surely.

Mr. Burling: —be marked.

(The photostat of "Inventurenbuch" was accordingly marked for identification as Defendant's Exhibit 70.)

By Mr. Burling:

Q. What does the word "Inventurenbuch" mean in German? A. I don't know in which sense it is meant. In Switzerland I think—

Q. What is a "Inventurenbuch"? A. I think it means investment.

Q. Will you look at the sheet marked "Inventur"? A. Yes.

Q. And see if you see any investment in 1938 in Transdanubia. A. In which year is it in the book here?

Q. Excuse me; I opened at the wrong place. A. 1110 I don't see it on this page.

Q. Just a moment. I show you a page which is marked "Inventur", as of December 31, 1938. A. Yes.

Q. Will you look at the first page following that— A. Yes.

Q. And see if there is not an indication of an investment in Transdanubia. A. Yes; it is as I have stated, an investment of pengo 90,000, which is valued at 78,750 Swiss francs.

Q. And do you see any other investment in Transdanubia? A. Yes, there is a so-called current account.

Q. What is that investment? A. That means "loan". I can't read the figure. It is misprinted here. It must be an 8, I guess—84,146.96.

Q. Thank you. Now, will you look at a page beginning "Inventur" as of December 31, 1949. And then look at the second page and see if you can find an account or an investment in Transdanubia as of that date? A. Yes. The shares I think are the same. And the other figure is slightly higher; it is 89,453.40, I guess it is.

Q. Now, will you look at a page marked inventory as of December 31, 1940, and then look at the next sheet following that and tell us what the inventory shows for that date. A. This is a current account, at this time, it is about 13,000 pengo higher; it is 102,360.

Q. Francs? Or is that pengo? A. Pardon me—Swiss francs.

Q. In other words, the shares remain the same? A. Yes.

Q. And the cash advanced is now 102,000 francs? A. Yes; it is about 12,000 francs more.

Q. Now will you look for the inventory for December 31, 1941, and see what the investment of the plaintiff in Transdanubia was? A. The investment in shares is the same; and as per the date of December 31, 1941, the investment is about 8,000 francs higher, namely, 109,918.50. But I might state here that this date of this balance sheet has nothing to do with the date of the payment.

Q. No; it merely means that during the year 1941. A. Yes.

Q. Now let us take the inventory for—where is the entry relating to— A. I think it is the same.

Q. Let us look now for the inventory for December 31, 1943. What is the investment in Transdanubia? A. It is

exactly the same as before—109,918.50 Swiss francs.

1112 Q. By the way, when did Hungary declare war on the United States? Do you know? A. It must have been in 1942.

Q. Wasn't it December, 1941? A. Or late in 1941, or the beginning of 1942.

Q. Now, will you look at the inventory for December 31, 1944, and tell us what the investment in Transdanubia was? A. It is still the same figure—109,918.50.

Q. Let us look now for the inventory for December 31, 1945. A. Still the same figure—109,918.50.

Q. Now, the German Army surrendered when? A. I think it was in the summer, 1945.

Q. So that all during the war between the United States and Germany, plaintiff had an investment of 78,000 francs in the stock of Transdanubia, and advanced to it and hundred and how many thousand, did you say? A. About 109,000 Swiss francs in advances.

Mr. Ingoldsby: Pardon me. Is that clear? The question, I believe, is framed so that it appears the 109,000 was advanced during the period of the war. I want that cleared up, that 109,000 was advanced prior to the war.

The Witness: Yes, definitely so.

By Mr. Burling:

1113 Q. And what is a dollar equivalent of about forty-five thousand, isn't it? A. It all depends at what time you take it. At the time of the investment, it was about forty-five thousand. Later on the pengo went down and now it is about zero.

Q. When the investment was made, it was the equivalent of about forty-five thousand United States dollars? Isn't that right? A. Roughly speaking, yes.

Q. Now, in addition to that, Uebersee guaranteed loans which Hungarian banks made to Transdanubia, did it not?

Mr. Ingoldsby: May I ask at what time?

Mr. Burling: If it didn't at all, the answer is no.

Mr. Ingoldsby: It is very important that the questions be confined to the time, because these questions relate to the question of doing business with an enemy or ally of an enemy country. I don't think there should be any confusion about the dates on it, because on the dates completely depend whether or not the plaintiff corporation was or was not doing business.

Mr. Burling: Counsel perfectly well knows I am going to come to the date. First of all I want to know if there was any such transaction, and then I will ask when the date was.

By Mr. Burling:

1114 Q. Was there any such transaction? A. May I explain it?

Q. Please do. A. Switzerland was a so-called hard currency country, whereas Hungary was currency controlled. That was the reason that in the beginning, I think around 1937, or 1936, we did not put money into Hungary in pengos, but cause a Hungarian bank to loan the capital to Transdanubia. This was the only way to keep the Swiss francs out of Hungary.

Q. Well, in addition, is it not the fact— A. May I finish, and then we clear it up?

Q. Surely. A. Then later on, after those losses had occurred, there was no need going on with this loan, and so we then paid the Hungarian Bank, and that is how this credit balance appears.

Q. But this guarantee of a loan by a Hungarian bank is a separate transaction from the advances which you

have just testified about? A. In the beginning, in 1937, it went into those accounts we just spoke about. If you are speaking about a guarantee in later years, that is something different.

Q. I will direct your attention specifically now to the year 1942—Mr. Ingoldsby.

Mr. Ingoldsby: Thank you.

1115

By Mr. Burling:

Q. Isn't it the fact that Uebersee guaranteed an extension of a loan of 32,000 francs, that is, that it guaranteed to hold the Swiss Bank Corporation harmless, and the Swiss Bank Corporation guaranteed to hold the Hungarian Escompte and Wechsler-Bank of Budapest harmless, on a guarantee of 32,000 francs? A. It was merely an extension of a guarantee already put up in 1939 or 1940.

Q. I see. But that is over and above the loan by Uebersee to Transdanubia. That is a separate transaction? Is that right? A. It is an entirely separate transaction, because of the need to pay official fees to the Hungarian Government.

Mr. Burling: I ask that Defendant's Exhibit 71 and 71-A be received in evidence as being conceded by the plaintiffs as coming from their books and records.

(The documents referred to were marked and received in evidence as Defendant's Exhibit 71 and 71-A.)

Mr. Burling: And I would like, if Your Honor please, to read one paragraph.

"Pursuant to the telephoned instructions given by Dr. J. Hengeler on March 20 we have caused the Swiss Bank Corporation to extend until June 30, 1942 its guar-
1116 anty of Swiss Francs 32,000 to the Hungarian Escompte and Wechsler-Bank, Budapest. Because of

the fact that the time limit expires on March 21, this was done by telegram."

I should say, Your Honor, this is dated "Zurich, March 23, 1942."

It is addressed to "Overseas Finance" and it is signed "Adler & Co. A. G." And it goes on:

"We take the liberty of debiting you, as of, today, with a quarterly commission of one half percent for the period from March 31, 1942 to June 30, 1942."

I ask that Defendant's Exhibit 72 and 72-A be received in evidence, as conceded to be from the files of the plaintiff, and I would like to read that.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 72 and 72-A.)

Mr. Burling: This is a communication dated June 6, 1942, addressed to Bankhaus Adler & Cie., in Zurich:

"In answer to your letter of the 4th inst. we would appreciate if you extended the loan for the Transdanubia Bauxit A. G., Budapest with the Schweizerische Kreditanstalt, Zurich, in the amount of Fr. 32,000, until September 21, 1942."

I ask that there be received in evidence Defendant's Exhibit 73 and 73-A, as being conceded to be from the files of the plaintiff corporation; and I would like to read it.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 73 and 73-A.)

Mr. Burling: This is addressed Overseas Finance Corporation; it is a letter dated Zurich, September 22, 1942, from Adler & Company:

"Subject: Guaranty of Francs 32,000.00 given by the Swiss Bank Corporation, Zurich to the Hungarian Escompte and Wechsel-Bank, Budapest.

"In accordance with instructions, given over the phone by Dr. J. Henggeler on September 19, we have caused the Swiss Bank Corporation, Zurich, to extend until December 31, 1942 its guaranty of Francs 32,000 given to the Hungarian Escompte and Wechsler Bank, Budapest. We have requested the mentioned bank to wire the extension in view of the expiration of the period in Budapest on September 21"—and so forth and so forth.

And signed Adler & Company.

By Mr. Burling:

Q. By the way, who is this man Henggeler who is referred to? Do you know? A. Henggeler, as you know, is the legal counsel of Overseas, and my personal lawyer.

Q. He is also a director of the plaintiff, isn't he?

A. Yes.

Mr. Burling: I ask that there be received in evidence Defendant's Exhibit 74 and 74-A, as being conceded to be documents from the files of the plaintiff.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 74 and 74-A.)

Mr. Burling: This is a letter addressed to Overseas Finance Corporation, from Adler & Company, A.G., dated November 17, 1942:

"Subject: Guaranty of Francs 32,000.00 given by the Swiss Bank Corporation, Zurich, to the Hungarian Escompte and Wechsler Bank, Budapest.

"We have been advised by the Swiss Bank Corporation, Zurich, that the Transdanubia Bauxit A. G. has repaid the loan arranged, some time ago with the Hungarian Escompte and Wechslerbank, Budapest, for your account by Fritz von Opel. Accordingly, the guaranty extended by the Swiss Bank Corporation for this loan, in the amount of Francs 32,000.00 has lapsed.

"We have credited, therefore, your general account, as of today with Swiss Francs 32,000.

"We have further debited the security account and 1119 credited the guaranty account with corresponding amounts.

"Very truly yours, Adler & Co., A. G."

By Mr. Burling:

Q. Now, it was your impression, was it, that Transdanubia was not doing any business in 1941? A. This guarantee arrangement was made in 1939 and 1940, and the guarantee was only continued to prevent our losing these Swiss francs which had been put up as collateral.

Q. Can you explain, if Transdanubia was not doing any business in 1942, how it managed to repay a loan of 32,000 Swiss francs? A. I never said that they were not doing business. I was, as I previously stated, in the spring of 1941 under the impression that they leased the whole mine, lock, stock, and barrel, to Hungarians. In other words, it was my order to the management to get rid of this entire enterprise.

Q. At any rate, as of April, 1942, Transdanubia had extended, in addition to the \$45,000 you have already testified about, had extended a guarantee of an additional 32,000 Swiss francs? A. No, Mr. Burling, that is not a correct way to express it.

Q. Perhaps not. A. Because a loan was given, as I earlier stated, in 1939 and 1940.

1120. Q. I mean the investment. A. So it was merely a technical extension of the credit arrangement, as otherwise we would have lost those thirty thousand or thirty-two thousand Swiss francs which we had put up as collateral.

Q. Yes; but addressing yourself now to April, 1942, the direct investment had a dollar value, that is, on the books, it was the dollar equivalent of about forty-five thousand? Is that right. A. Well, yes.

Q. And in addition to the credit which was extended, there was 32,000 Swiss francs? A. About \$7,000, which credit already had, run several years, yes.

Q. But the investment and extension of credit which Uebersee had made at that time was about fifty thousand dollars, wasn't it? A. You stated yourself that those two things have to be kept separate. One was a guarantee, and the other one was an advance carried on current account or investment account.

Q. If you add up the guarantee and the advance and the investment in the shares, the total is over \$50,000, isn't it? A. You cannot add those figures. That 1121 is an entirely different character.

Q. I understand that. But they all constitute moneys advanced to or invested in Transdanubia, do they not? A. One was an advance. The other one was a guarantee arrangement.

Q. Fine. And the total of the moneys advanced or guaranteed is in excess of \$50,000? Isn't that true? A. The guarantee agreement was an agreement covering about \$7,000.

Q. All right. And forty-five and seven add together to a number in excess of fifty, do they not? A. But that is not a proper way of keeping books, Mr. Burling. You cannot just add any two figures.

Q. Well, I just want to add these two figures, and they add to a figure in excess of \$50,000, don't they? A. Mathematically speaking, if you add thirty-five and seven, you get forty-two—

Q. And if you add forty-five and seven, it is— A. It is fifty-two; it is fifty-two mathematically speaking, yes, sir.

Q. Did you not testify before the Miami hearing board that the total investment in Transdanubia was about fifteen thousand dollars? A. That is correct. As I explained to you before, the pengo had taken a terrible

dive, and those figures you mentioned of forty-five thousand are not the correct figures, but merely, so to say, the official rate of exchange. It had nothing to do with the inner purchasing power of the pengo.

Q. But you had put it up in Swiss francs, which stayed on gold all during the war--you had put up the dollar equivalent of forty-five thousand in an investment, plus a guarantee of seven, hadn't you? A. You cannot express it in this way. The investment was made in pengos, and if anybody asked me in 1942 what its value is in dollars, I have to take the rate of exchange into account. If you ask me today, I would say one million pengo is less than one American penny.

Q. And would you say today, therefore, that the amount invested in Transdanubia was one penny? Is that a fair way of putting it? A. Yes; it is totally written off, and apparently a total loss, because the Russians have taken over the entire Hungarian industry.

Q. Yes. But you didn't think, did you, the Miami hearing board was trying to find out the value of the pengo? It wanted to know, did it not, what you had put into it, what you had invested into the bauxite mines. A. No; they didn't ask me how many pengos or how many Swiss francs went into it. They wanted to know, in a rough guess in dollars, how much it was worth.

Q. Did they want to know how much it was worth, or how much you put into it? A. I didn't put any dollars into it, you see. It was a pengos investment.

Q. You didn't explain that to the hearing board, did you? A. Please?

Q. You didn't explain that to the hearing board, did you? A. Would you please read me the question, Mr. Burling?

Q. (Reading:) "Question: Do you have any investment other than Overseas stock?"

"Answer: No; that is my total investments there in Overseas.

"By Mr. Kressel:

"Question: You spoke of what you have in Overseas." And you say: "All the Overseas are mentioned in the questionnaire."

It must be all the Overseas assets—

"In 1932 or 1933 I acquired some mineral rights in Hungary. It is a German corporation and never paid any dividends."

A. Pardon me. That must be a misprint. It is a Hungarian corporation.

1124 Q. And you said it was operated at more or less of a loss, and the total amount was about fifteen thousand dollars? A. Yes.

Q. But didn't you know the hearing board was inquiring into the amount of money you had invested in this bauxite mine? A. In Miami the people wanted to know how big, so to say, my interest was; they wanted to have it expressed in American dollars. So of course I had to keep the rate of exchange in mind.

—It wasn't a dollar investment, from the beginning. If they had asked me, "Did you invest dollars, and how many, into it", I would have said, "I did not invest dollars; I invested Swiss francs, and now I have pengos, and in dollars they are worth so and so much."

Q. All right. You knew, at the time you were being interrogated by the Miami board, that they were interested in the bauxite mines because they considered bauxite a militarily important substance. Is that not true? A. Bauxite—the Opel Corporation was the greatest user of aluminum between the two world wars.

Q. This is during the world war we are talking about—World War II. A. Every metal, whether iron or aluminum

or magnesium, becomes armament metal, certainly. And the Opel factory did entirely the work in introducing metal into the automobile manufacture. We were the greatest consumers since before the First World War.

Q. And you understood that in 1939, 1940, and 1941 the bauxite that was being produced by the mines was going to the Giuliani factories at Ludwigshafen? A. They were interested in buying it.

Q. And that is where the output of the mines went, wasn't it? A. I think so.

Q. And you were well acquainted with Dr. Edgar Giuliani, weren't you? A. I wasn't well acquainted. I saw him when he visited one of the mines.

Q. And you corresponded with him, didn't you? A. I refused to invest money, if you call that correspondence.

Q. Don't you have any other correspondence with him? A. I don't recollect that. I had an exchange of wires. I did not have a correspondence, Mr. Burling. That wasn't possible, because there was a Bermuda censorship. But I sent everything back and forth by wire, and I would be pleased to show you the exchange of wires. There are at least twenty different wires.

Q. I would be pleased to see them, but didn't you correspond with Edgar Giuliani before you left Europe? A. I don't recollect that.

Q. You testified, I think, previously that you were unable to take the oath of allegiance to Liechtenstein, because you had broken your leg and couldn't travel there. Is that right? A. You asked me about this paragraph, and I said it wasn't a "must", under Liechtensteinean procedure.

Q. Didn't you also say the reason you didn't take the oath was because you could not travel to Liechtenstein at that time? A. I said I might have gone there, but I was unable to travel—I wouldn't say "unable" to travel; but all travel I could avoid, I tried to avoid.

Q. And when was it you fractured your leg? A. I didn't get the question.

Q. When did you break your leg? A. I think it was in February, 1939.

Q. February 3, wasn't it? A. That is possible.

Q. I show you what looks a clipping from a newspaper and ask you if that refreshes your recollection as to when you broke your leg. A. The newspaper report says February 3; so I think it was the preceding day, apparently.

1127 Q. February 2? A. Apparently, yes.

Q. And when, after this accident, were you able to travel? A. For the first six or eight weeks, if I remember correctly, I was in a heavy plaster cast. Later on I felt a little better.

Q. When were you able to travel, Mr. von Opel? A. What do you call "travel"?

Q. Going from one country to another. A. You see, I had terrible pains at the time. I had a second accident.

Q. When did that take place? A. Please?

Q. When was that, the second accident? A. I think it may have been in January.

Q. Of what year? A. Of 1940.

Q. I see. In any event, you were well enough to travel to Budapest in June, 1939, weren't you? A. I think I went there, yes.

Q. And you sent a telegram to Edgar Giulini, did you not, from Budapest? A. That is possible.

1128 Q. Will you state whether you did or did not send that telegram? A. Yes. It deals about this stealing of Mr. Koranyi, and I asked him to straighten this matter out, because he was stealing from my property and I had to pay for it.

Q. But, at any rate, you sent this telegram? A. Yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 75.)

By Mr. Burling:

Q. Now, when you went from St. Moritz to Budapest, you went through Liechtenstein on the train, didn't you?

A. I don't know which way I went. I think I went the other way around, if I remember correctly. About which date are you speaking?

Q. When you traveled to Budapest in June, 1939. A. In June, 1939, it is possible I went by train, because I went a second time later in the fall.

Q. And doesn't the railroad pass through Liechtenstein? A. Yes.

Q. Will you explain why, if you were well enough to travel through Liechtenstein in June, you were still unwell enough to go to Liechtenstein in November?

1129 A. Because my condition got worse, Mr. Burling.

Q. Will you examine Defendant's Exhibit 76 and see if it is not your reply to Defendant's Exhibit 75?

Mr. Burling: I withdraw my last question.

1130 A. Yes, I am saying in it that the stealing of Mr. Koronyi is still going on.

Q. I made a mistake, I thought this cable went the other way. This is a telegram which you sent to Giuliani?

A. Apparently, yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: It is clear that the date is June 9, 1939?

By Mr. Burling:

Q. It bears a stamp, does it not, "Received June 9, 1939"?

A. Yes, it bears a stamp, Foreign Exchange Control.

Q. It bears another stamp up here, does it not? A. June 9, 1939.

(The document above referred to, a copy of a telegram dated June 9, 1939, was marked Defendant's Exhibit 76 and received in evidence.)

Mr. Gallagher: Your Honor, could we have a few minutes recess if we are going to five o'clock?

The Court: I am going to stop at four tonight.

By Mr. Burling:

Q. Will you examine the original of which document 77 is a photostat, and state whether that is not a letter which you signed and sent to Mr. Giulini in Ludwigshafen? Just look at the signature. Is there any doubt that it is yours? A. Yes.

1131 Q. And you sent it to Giulini, did you not? A. Yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document above referred to, a letter dated July 12, 1939 to Dr. Edgar Giulini, was accordingly marked Defendant's Exhibit 77 and received in evidence.)

By Mr. Burling:

Q. I wish to ask you now to look at the date and the place where it appeared it was written. Will you explain what the words in the upper right-hand corner of the first page mean? A. The date is July 12, '39.

Q. And where does it indicate that the letter was written? A. It is the words we mentioned this morning, Wilhelmshafen.

Q. What does the word "Jagdhaus" mean? A. That means hunting lodge.

Q. I do not intend to ask you further about that. A. Of course, my father's place.

Q. Will you look at an original letter, of which Defendant's Exhibit 78 is a photostat, and say whether this is not a letter which you wrote to Mr. Giuliani.
 1132 (Pause) Can't you tell from your signature? A.
 Yes. I just wanted to read it.

Q. You can hold it. I want to read the section headed "Shipments."

Mr. Burling: I offer this letter in evidence.

Mr. Gallagher: No objection.

(The document above referred to, a letter dated July 31, 1939, to Giuliani Bros., was accordingly marked Defendant's Exhibit 78 and received in evidence.)

By Mr. Burling:

Q. Did you not write as follows, and the letter is dated Sylt, July 31, 1939: "Upon receipt of an order for about 150,000 tons of which annually 30-40,000 tons would be shipped,—doubling the annual quantity being possible if new mines are opened—I could make shipments at a price of RM 13.20 per ton f. o. b. car or ship Gyoer. Such shipment would be made on the basis of .56% aluminum, 3% silica, and 7% humidity, the price to be increased or reduced," and so on. Did you intend to offer to ship 150,000 tons of bauxite annually on July 31, 1939? A. I asked Giuliani why I should bear all the trouble I had through Mr. Koronyi, and I told him if he would get rid of Mr. Koronyi, and if I could take over this 50 per cent of Koronyi, and if he gives a long-term contract, I might make deliveries. It says in this letter, of course,
 1133 only if you assign all your claims against Koronyi.

Q. At any rate, you were talking about shipping bauxite in quantities of 150,000 tons a year. A. Under certain conditions, yes.

Q. There was a man named Frick in Giulini Brothers who was active. A. I think one of him managers was Mr. Frick. I think he was his purchasing manager.

Q. And he also communicated with you from time to time, did he not? A. That is possible.

Q. I show you a document of which Defendant's Exhibit 79 is a photostat, and ask you if that is not a file copy of a letter from Frick which you received. A. Yes, it is a report on the trouble between Giulini and Koronyi, and the steps the Hungarians had taken to stop production.

Q. And you received this? A. I remember it, yes.

Q. And it is dated September 8, 1939? A. Yes.

(The document above referred to, a letter dated September 8, 1939, to Mr. Fritz von Opel, was marked Defendant's Exhibit 79 and received in evidence.)

1134 By Mr. Burling:

Q. And you replied to Mr. Frick, did you not, in a letter dated September 11? I show you a document on your letterhead addressed to Mr. Frick, which begins, "Thank you very much for your kind letter of September 8," and I ask you if that is not a letter which you wrote to Frick? A. Yes.

Mr. Burling: All right, I offer it in evidence.

(The document above referred to, a letter dated September 11, 1939, to Mr. Heinrich Frick, was accordingly marked Defendant's Exhibit 80 and received in evidence.)

The Witness: I asked him whether it is agreeable to him that I sell bauxite into Switzerland in case the Hungarian Government forces me to produce.

Mr. Gallagher: Does the record reflect, Mr. Burling, that these letters are not from the plaintiff, or Mr. von Opel's files?

Mr. Burling: The record does not reflect anything, either way.

The Witness: They are taken from the files of Giulini.

By Mr. Burling:

Q. Do you know that? A. Yes, I see it from those marks.

Q. You said to Mr. Frick on September 11, "The most important question, of course, is what is being done
1135 about resumption of production." A. Are you quoting from this letter?

Q. The middle paragraph, first sentence. A. Yes, but you have to read it together with the next sentence.

Q. Well, read that, please. A. "Out of the report of my managers, I gain the impression that mining authorities demand continuation of production and that they are going to expropriate the mining rights if we do not follow their wishes."

Q. I show you now a document addressed to you beginning with the words, "We acknowledge with thanks receipt of your letter of September 11, addressed to the individual signing below on the right side." I show you a document, of which Defendant's 81 is a photostat, and ask you if that is not a letter which you received from Frick of Giulini Brothers. A. Yes, it says in this letter that it would be of the most importance to Germany if I would invest large amounts in Hungary to start the production.

Q. Well, they say more specifically that you would do meritorious service for the raw materials supply of the German aluminum industry and the entire war economy of Germany if you would tackle with all your energy the resumption of production in the mines. A. That is correct, Mr. Burling, and I did just the opposite.

1136 Q. Well, we'll see.

Mr. Burling: I offer this document in evidence.

(Accordingly, the document above referred to, a letter dated September 16, 1939, to Mr. Fritz von Opel, was marked Defendant's Exhibit 81 and received in evidence.)

By Mr. Burling:

Q. Did you reply to this letter? A. Would you show me the reply?

Q. I show you a document of which Defendant's 82 is a photostat, and ask you if that is not a telegraphic reply to Frick's letter. Did you send that? A. Yes.

Mr. Burling: I offer it in evidence.

(Accordingly, the telegram referred to, dated "29/27 18 152 1523", was marked Defendant's Exhibit 82 and received in evidence.)

By Mr. Burling:

Q. Now, Mr. von Opel, Frick wrote you saying that you— A. Would you show me the letter to which—which is mentioned in this wire.

Mr. Gallagher: July 31.

The Witness: Could I see it again?

Mr. Gallagher: Defendant's 78.

Mr. Burling: It is the letter of September 16, 1137 your letter September 16 as before stand by my offer July 31. Upon receipt of order immediately ready to travel Budapest for purpose of starting production.

The Witness: May I see this letter of July 31?

Mr. Burling: Yes.

The Court: Let me see that telegram. (The document referred to was handed to the Court.)

Have to adjourn now.

(Accordingly, at 4:00 p.m., the trial was adjourned until 10 o'clock Monday morning, December 20, 1948.)

1143 MANFRED STANSFIELD, appearing as a witness by request of the Court, and being first duly sworn, was examined and testified as follows:

Mr. Burling: Your Honor, at this time I would like to introduce to the Court Mr. Harry Keefer, Special Agent of the Federal Bureau of Investigation, who will
1144 assist us and be a witness in this particular phase of the matter.

The Court: All right.

Mr. Ingoldsby: I understand that according to Your Honor's order, Mr. Stansfield is to be interrogated at the present time on cross examination, the same as though he appeared as a live witness at the time his deposition was read. Is that correct?

The Court: My ruling was that we would supplement whatever testimony had already been given, without striking from the record the testimony offered.

Mr. Ingoldsby: I see.

Examination by Defendant

By Mr. Burling:

Q. Will you state your name, please? A. Manfred Wronker Stansfield.

Q. And in 1931 did you have some other name? A. Manfred Wronker-Flatow.

Q. And that was changed when you were naturalized? A. Yes, sir.

Q. And when did that take place? A. 1946.

Q. Were you educated in the law in Germany? A. That is right—and in Switzerland.

Q. And when did you become a member of the German Bar? A. 1920.

1145 Q. Were you ever employed by General Motors, or retained by General Motors? A. Yes, sir.

Q. When were you first so retained? A. Either 1925 or 1926.

Q. And did you become General Motors' principal German attorney? A. I did.

Q. And in the year 1928 did you negotiate or participate in negotiating any large deal in which General Motors was a party? A. I participated in the negotiations that led to an option for General Motors to purchase the Adam Opel firm, or shares of the corporation, if such corporation be formed.

In the meantime, until the option was exercised, I drew all the agreements in that connection, in addition.

Q. And in these negotiations, which party did you represent? A. At the start I only represented General Motors. After the first meeting in Paris, to my knowledge the Opel brothers did not have a lawyer working for them in these negotiations outside of myself.

Q. Just a moment. Did you represent the Opel brothers, or did you represent General Motors? A. In the negotiations first I only represented General Motors.

1146 Q. Did you ever represent the Opel brothers in these negotiations? A. I would say to these extent—and I will have to go a little bit into this, otherwise it doesn't make any sense, because my position was rather unique.

When the Opel brothers appeared in Paris to negotiate—

Q. When did they appear in Paris? A. In 1928, at the time the first option agreement was negotiated. Then Mr. Hachenburg accompanied them. Mr. Hachenburg brought a very elaborate agreement that he had prepared for the handling of the deal, in case General Motors should be interested in making a deal.

I at that time was of the opinion that the agreement would not be acceptable to General Motors in the form it

was made, and I suggested that a new agreement be drawn up which would not just give General Motors an option to buy physically the plant and the firm and everything that went with it, of Adam Opel, which at that time was not a corporation.

But under the German law at that time, something Mr. Hachenburg had not brought out, there was a possibility for the old owners, and particularly in case of a family corporation, for a family to change from a company that was not incorporated, to a corporation, with great savings of taxes.

For some reason or the other, which I do not recall at this moment, but probably I did know at that time, the German Government had an interest in creating corporations.

I suggested to the Opel brothers at this time that the right way would be for them to form a corporation and sell the stock to General Motors, instead of selling physically every item of the plant. This saved both for General Motors and for Adam Opel and for the Opel brothers, and that represented millions of marks—I had better speak in marks—and my whole suggestion was very acceptable to both sides, because it simplified the negotiations at that time, and it enabled General Motors and Opel brothers to arrive at an agreement within a rather short time in Paris at that meeting.

Q. This was a transaction involving over a hundred million marks? Is that correct? A. It was somewhere around one hundred and twenty or one hundred and thirty million marks.

Q. And you were retained by General Motors as their lawyer in this transaction? Is that right? A. That is right.

Q. Did you regard yourself also as being retained by the opposite party? A. Definitely not.

Q. So you were not performing professional legal service

ices for Opel at this time? A. At this time in Paris, 1148 definitely not, but I did advise them—and I will explain this whole thing.

Q. All right; thank you. In the course of the negotiations between General Motors and Opel, did you come to represent either Wilhelm von Opel or any other member of the Opel family, as their lawyer? A. During these first negotiations—

Q. I mean thereafter, during the negotiations for the purchase. A. This, my suggestion—

Q. Will you answer my question, please?

Mr. Ingoldsby: Just a second.

I think the witness is entitled to courtesy, Your Honor. He started to answer the question.

The Witness: I am trying very hard to be cooperative.

The Court: What he wanted to know was did you represent them at any time during the negotiations.

The Witness: You see, I don't know whether I should call that "representing" them, but I think I did, and for this reason, and with the knowledge of General Motors, because the corporation then was formed, and in the formation of this corporation I was not representing General Motors, but I was assisting the Opel brothers in forming the corporation, in a way that would afterwards be acceptable to General Motors.

By Mr. Burling:

Q. Did you draw the papers? A. Of incorporation? 1149

Q. Yes. A. I had something to do with them. I couldn't say for certain at this time whether I drew them entirely—

Q. Who drew them? A. I wouldn't know, but probably it could be Hachenburg who was in that.

Q. Don't you know it was Hachenburg who incorporated Adam Opel, A.G.? A. I do not. I don't deny it could

have been Hachenburg, and probably it was. But I cooperated very closely, without ever talking to Hachenburg, I believe, in that connection. But with Opel brothers I had a lot of talk, and with their men, within the six months until it was accepted, the option.

Q. Were you ever retained personally by Wilhelm von Opel at any time? A. I would like to make some statement about "retaining." I have formally stated—because I read my deposition now—that I was not retained, and I think I gave a true, narrow interpretation to the word "retained," because there is knowledge of this, of everybody in here, that I did act in a legal capacity for Wilhelm von Opel in a number of cases; and one of them is an agreement that is very much discussed in this Court.
1150 So I have acted, you see. I thought "retained" means you get a retainer, which I never did.

But I acted as a lawyer in a number of cases, which I don't all of them recall, but some I do.

Q. Will you tell us those you do recall, please? A. Off-hand, I acted in a legal capacity in many instances in connection with the transfer from Opel to General Motors, where they did not have an additional lawyer acting at all.

Q. Your testimony is that because the Opels did not have a German lawyer in a transaction involving one hundred and twenty or one hundred and thirty million marks, and you were the lawyer for the party on the other side of the transaction, you just helped out and also performed legal services for the Opels? Is that it? A. That is it, very definitely.

Q. That is so? A. That is so.

Q. Have you ever been on any legal transaction of comparable size, where you were representing both parties? A. You see, I don't say I was just representing both parties. I was acting in some capacity, and advising both parties in some respects. That is what I am trying to say now.

Q. Now, Mr. Stansfield, is there a code of ethics which

applies to German lawyers? A. Very definitely,
1151 and I was always very much aware of that, Mr.
Burling.

Q. Is there anything in the code of ethics, the German code of ethics, relating to representing conflicting interests? A. If both parties agreed to that, using you as a kind of arbitrator, there would be nothing against it. And, in addition to that, I did not act when the interests were conflicting. In fact, when the Opel brothers, after they had seen me in action in Paris and in Berlin and in Ruesselsheim in connection with this thing, asked me whether I could not also take care of their interests, I told them definitely, only in so far as they didn't conflict with the General Motors interests.

Q. Did you ever tell anybody in General Motors that you were performing any legal services for the Opels during these negotiations? A. John Thomas Smith was absolutely aware of it, and I think others are, too.

Q. And you are aware that John Thomas Smith is dead, are you not? A. I was very sorry to hear that, because otherwise he would confirm what I have said, if he hasn't already.

Q. Have you ever told the story which you are now telling in this Court, before?

1152 Mr. Ingoldsby: Just a minute please.

I object to this being stated as telling a story, Your Honor. I think the connotation is entirely incorrect, and it should be, "Have you ever testified?"

The Court: "Have you ever told this narration?"—is that what you mean?

Mr. Ingoldsby: It connotes that he is telling a story.

The Court: You can interpret it that way.

The Witness: This whole, rather unique situation was fully in the knowledge of John Thomas Smith, and I have told it to him, and I feel very sure that he has told it to others in General Motors.

By Mr. Burling:

Q. You have been interrogated by the Federal Bureau of Investigation, haven't you? A. I don't know how often. I have been, yes.

Q. And did you ever tell an agent of the Federal Bureau of Investigation that you have performed legal services for the Opels in connection with the General Motors sale, and that you had told this fact to John Thomas Smith? A. If I had any occasion to tell them, if the questions were such that they would cause me to give a story like that, I definitely would have told them, because I am telling facts.

Q. That is fine. But I want to know if you did 1153 tell any agent. A. I don't know, sir.

Q. Do you recognize Mr. Harry Keefer, here in court? A. Yes, I have met him several times before.

Q. And he has questioned you about your services to the Opels, has he not? A. He has asked me many questions.

Q. Including the nature of your services to the Opels, has he not? A. He has asked me in connection with a known payment to me of \$20,000, which was set up as a loan, about my services to Opel. And I didn't feel that the whole questioning about this loan was proper, because I stated to Mr. Keefer that in our procedure, before you start answering a claim, the claim is put up to you. And I didn't think that Wilhelm von Opel ever would ask me for the repayment of this \$20,000. So I said, "I will be willing to give a complete statement of facts in answer to a claim made to me, but not before it was made."

Q. In other words, you did not tell Mr. Keefer anything about performing legal services for the Opel family in connection with the General Motors sale. Isn't that true? A. I couldn't tell you that, because I didn't keep any record of what I said, and I have talked with him

so often. But if I didn't tell it to him, I had no
1154 reason to tell it at that time, probably; but if he
had asked me, I would have told it.

Q. Don't you recall Agent Keefer asked you explicitly
to give the services you performed for the Opel family?

A. He did, and I explicitly refused to go into any details,
because the question was in connection with a loan made
to me. And I said I was going to spell out what I had
against this loan, before the claim for the loan was made
up to me.

I don't understand the procedure at all, that somebody
comes in to question you about a so-called business claim
against you, and wants you to make all your statements
before even the claim has been issued against you—and
that is exactly what I explained to Mr. Keefer.

Q. Did you not understand, Mr. Stansfield, that you
have been accused of blackmailing Wilhelm von Opel in
connection with this gift agreement? A. This is so ridicu-
lous. If anybody had ever made such a statement that I
have really very few words to say about that. I did not
have anything to blackmail him about. I been a lawyer
of reputation all my life when I was in Germany, and I
never had any need or any reason to blackmail anybody
for anything, because I had honest money coming to me
and only that I have had all my life.

Q. Didn't you realize that was the purpose of
1155 Agent Keefer's inquiry?

Mr. Ingoldsby: I object to that, Your Honor—
“Does he know the purpose of Mr. Keefer's statement?”

Mr. Burling: If he does know, he can state it.

Mr. Gallagher: May it please the Court, if I may inter-
rupt at this point, Mr. Burling is talking about a black-
mailing situation; and, from his own alleged statement,
he never received any statement about a blackmailing
until a week before this trial.

The Court: Just a minute. What is the question?

The Reporter (reading): “Didn't you realize that was
the purpose of Agent Keefer's inquiry?”

The Court: I guess his realization would be proper.

The Witness: I can answer that question, because if anybody had suggested to me I had blackmailed Wilhelm von Opel, and that Wilhelm von Opel had made any such statement, I would have called him a downright liar if he said Wilhelm von Opel had made such a statement. If anybody was accusing me of blackmail, I would have thrown him out if he had been in my office, and I wouldn't mind who it was.

By Mr. Burling:

Q. Will you now describe all the services which you ever performed for Wilhelm von Opel, which you can recall.

Mr. Ingoldsby: I object, Your Honor. I think it is immaterial that the witness should have to go into 1156 each and every service he has performed.

The Court: If he recalls it. As I remember the deposition, there was some attempt to show that this gentleman was indebted to Mr. von Opel or his estate, and, as I gathered it, some of his testimony might be colored by that. And he said, as I recall from the deposition, that that had been extinguished by virtue of services performed.

Isn't that right?

Mr. Ingoldsby: Yes, Your Honor.

The Court: I think an inquiry as to whether he is biased in this case, or not, would be proper.

Mr. Ingoldsby: What my objection referred to, Your Honor, frankly I don't know the answer, but I assume there were some very personal services involved in there, or services of a personal nature.

The Court: What he is trying to find out is if he had a claim for \$20,000; and, if he did, it supports his statement.

Mr. Ingoldsby: Very well, Your Honor.

The Witness: I think I had a very reasonable claim for \$20,000.

The Court: What he wanted to know was the nature of your services. You have told of some. Were there any others?

The Witness: There were many others, and it
1157 started almost from the beginning, and other lawyers were not called in. There were many matters of different, where General Motors only knew to sue the Opel brothers, and the Opel brothers said to go ahead. And I settled those differences internally, advising both sides what they should do, and how they should do it.

For instance, I will take one, because I haven't all the facts here with me. I didn't know that I was going to be interrogated about other things than had directly to do with the case.

But immediately after the Opels had sold out, there was a case where the firm called Elite Diamant, where the Opel firm lost millions of marks, and General Motors felt that this should be recovered from the Opel brothers, because it involved a situation which they had known before.

I personally did not feel, I was not convinced, that the Opel brothers knew that events would take the turn they had taken in that case; and I suggested that we settle it. The Opel brothers didn't know how to settle it. And although I was under this pressure from General Motors and from John Thomas Smith to go ahead and sue, I said, "Do you mind if I help the Opel brothers to work it out and settle this, so that we don't go out in the open and drag the name Opel through the courts?"

And John Thomas was absolutely agreeable that
1158 I go ahead.

And I suggested that the Opel brothers set up a fund, a pension, for all the laborers, and that they pay into that fund a certain amount right now, and from then on pay every year a certain amount. And they would not have set up this fund without my advice.

The papers on that are available, and they are all in the Opel plant and you could see it, and also in the files of the Opel brothers probably you will find in my handwriting that I set up the fund for them; I advised them how to handle the whole thing; and I have gone over the facts with them until the whole thing was done. And General Motors accepted it the way that the Opel brothers, under my advice, offered it to General Motors.

That is one case.

By Mr. Burling:

Q. After 1929, when General Motors bought 80 per cent of the Opel stock, you became counsel of Adam Opel, A.G., did you not? A. Yes.

Q. And wasn't the service you just described done in your capacity as counsel for Adam Opel, A.G.? A. No. I would say it was to the benefit, also, of Adam Opel, A.G.

Q. Who was your client in this matter? A. My client was General Motors, or Adam Opel, A.G.

1159 Q. And not Wilhelm von Opel? A. But I asked for them in the legal capacity, advising them how to go about arriving at a settlement.

If they had taken a lawyer for doing this, outside of myself, they would also have had to pay very substantial amounts, because there was a lot of money involved in the whole thing.

Q. Did you ever perform any legal services for Wilhelm von Opel otherwise than as also a General Motors lawyer? A. Yes, I did.

Q. Will you describe those services? A. Well, one of them is in connection with the—well, first I can say in personal matters, his daughter had a lot of family troubles, and in that connection Wilhelm von Opel discussed in detail all the legal and everything that was involved in those personal matters.

Also that would have required another lawyer to do it for him, if he hadn't discussed it with me.

Q. You know, don't you, Wilhelm von Opel had another lawyer named Yaltman handling that marital problem?

A. As far as the outside is concerned, he would have to have another lawyer, because I was not appearing on the records as the lawyer. But I still was advising Wilhelm von Opel internally also on matters that he could discuss with his lawyer. And he would go a little bit wiser in 1160 talking to his lawyer after talking to another lawyer who was very friendly.

Q. Did you perform any other legal services for Wilhelm von Opel? A. I did.

Q. Will you describe them? A. And there were many personal services, legal services, that came up during the time. And a complete list of that I am willing to submit as soon as this claim is brought up against me. I am not in a position at this time, on a minute's notice, without any preparation, to record every detail. But I can give you one very important service.

Q. Please give us as many as you remember. A. Oh, I will give you one very important one.

Q. Please give us as many as you remember. A. All right. Well, my memory at this moment is rather weak, because the way I am interrogated doesn't give me a lot of help in remembering.

Q. Just give us as many as you can remember. A. But I will give you that important case.

Q. Well we will hear that first. A. The moment Wilhelm von Opel had sold out, and in my presence had received for the Opel family the check in payment of the Adam Opel firm, after that we drove home together. And Wilhelm von Opel said to me:

1161 "Now, you know I am not interested in accumulating any more money. It will be difficult enough now to keep what I have gotten. And if you would give that some thought in assisting me in that respect, I will be

very thankful, because I would like to keep it for my family and for myself."

A little later he told me how he got the old people together, in telling them about the sale, and handing out the portions to the various members of the family. All, outside of Fritz von Opel, the others—

Q. Just a moment. Did Wilhelm von Opel hand out any portions of the proceeds of the sale? A. Well, he did in his talk. He didn't pull out or give them a check, or however it was.

Q. Did he offer to give any portion to anybody?

Mr. Ingoldsby: Just a minute, please.

I submit, Your Honor, Mr. Burling was quite insistent that Mr. Stansfield tell what legal services he performed and that he tell about this particular one. I suggest that the witness be permitted to continue and tell it.

Mr. Burling: I suggest that counsel stop heckling, by objections and statements.

Mr. Ingoldsby: I am sorry.

I will ask the Court to rule on my objection.

The Court: I think we had better finish that, Mr. 1162 Burling, and then take him over the others.

Mr. Burling: Yes, sir.

The Witness: I have to get the whole situation back in mind, and I am trying to say that at that time Wilhelm von Opel said he told the old generation there, of Adam von Opel, told them very specific stories; but he said—

"You would be astonished how little they are interested in these family stories, and their interest is only what they are getting out of it. I hope my son doesn't feel the same way."

He said, "If you will give some thought how these things can be handled in the future, so that I can protect my part for my family, I will be very happy to have your suggestions."

And, off and on, we discussed the ways how that could be done. And finally came up to the way it was done, in 1931, when every day there were new orders raining from the government, that we decided on how matters should be handled now, which finally was to protect Fritz, when all the others already had been protected.

By Mr. Burling:

Q. Will you go ahead and describe your legal services?

A. Well, at this moment, there are no more legal services that I want to go into, because in getting them back into my mind, I get into long stories. But, in connection 1163 with that—

Q. Please, I want you to tell us of each legal service you remember. A. Well, at this moment, I don't remember—

Q. You don't remember any other legal service? A. Except this agreement in connection with this, in detail.

Q. Except your work in connection with the gift agreement? Is that right? A. With the gift agreement, and what I have already just said. And if I remember anything while we are going on, I will come back to it.

Q. All right, thank you. You do not remember any other legal services at the time? A. At this moment, no; but I have my papers home, and I think I can pick out quite a number I can put my hands on.

Q. I am interested in what you remember now. You do not remember any legal services after you drafted the gift agreement, which is the subject of this litigation? A. At this moment, no.

Q. Who was the Chancellor of Germany on October 5, 1931? A. I think for the moment that I don't know.

Q. Perhaps I can refresh your recollection. Wasn't it Bruening who was in the Government? A. In 1931?

1164 Q. Yes. A. I don't need any recollection there.

Q. That is what I am asking you. A. It was Bruening.

Q. In other words, you don't remember performing any legal services for Wilhelm von Opel after the National Socialist Government came into power? Is that right?

A. I do in connection with the claims that were then brought up against Wilhelm von Opel by the Nazis.

Q. You performed services in connection with that matter? A. Yes, I was very much involved in it, with Wilhelm von Opel—in fact, with the brothers Opel—very definitely. They called me up very excitedly quite a number of times, and at impossible times. So I remember very exciting and hectic times on that, with the Opel brothers.

Q. You were in the capacity of a witness in that matter, weren't you, and not as a lawyer? A. I was in the capacity of a lawyer, when I was talking with the Opel brothers, and I was in the capacity of a witness when I was questioned by the court or other authorities who had a right to question me.

Q. You told Mr. Keefer, did you not, you performed services for Wilhelm von Opel that were very dangerous, and you risked your very life for him? A. I doubt I said Wilhelm von Opel; but it is absolutely true that for the family Opel I did.

Q. You risked your life for the family Opel? A. I sure did.

Q. Will you state in what manner?

Mr. Ingoldsby: I object. Your Honor, the entire purpose of the—or let me put it in this way:

The only thing that justifies any extensive cross examination of this witness on the matter of legal services performed for the Opels is the matter of what appeared at one time to be an outstanding \$20,000 indebtedness.

I submit that the subject has been completely explored, that the witness has established services far in excess of that amount; and I say that additional examination on the question of services performed by this witness is nothing more than for the purpose of annoyance.

The Court: If this is one of the items, it would be material.

Is this one of the items for which you made a charge, this risking of your life.

The Witness: I have not made up any bill for it, Your Honor. I did charge for what I had done—

The Court: In that connection?

The Witness: Well, I would take it as a whole, 1166 for my services I had rendered during that time, I would set that off against the loan. And I feel that any court—

The Court: I understand that. What we are trying to find out now is, whether this risking of your life in behalf of the Opel brothers would be one of the items you would actually set off against that claim.

The Witness: I would.

The Court: You would? Then I think—

Mr. Ingoldsby: Your Honor, may I make a further statement on this? The witness, as I understand, is going to reply to a question concerning services which he performed during the period which clearly resulted in the summary decree issued against Wilhelm von Opel. I again point out that a detailed analysis of what happened in those proceedings will again result in our offer to introduce the summary decree which ultimately was issued.

The Court: I am not concerned with that. If you want to offer it later on and he makes it admissible, we will see.

The Witness: Your Honor, may I say, so that I don't have to go into detail of a lot of miscellaneous prosecutions, and those things, that without referring to that at all, I have sufficient material to set it off, and that any court that looks into it from the standpoint of comparing one claim against the other, will accept it. And I don't think that I have any need of putting anything of that— 1167 there is nothing in our code as a lawyer that for risking your life you get any extra payment.

The Court: I understand that. But I think what Mr.

Burling is trying to find out is, as I remember in your deposition, you said you were not indebted to Mr. von Opel for \$20,000, or for any other amount, as I remember it. I am not sure; but isn't that substantially right, that you said that?

The Witness: Yes.

The Court: Now, what I asked you was, was this one of the items you had in mind? If it was, then I would have to let him inquire about it.

The Witness: Well, I don't remember that I made the statement to Mr. Keefer that I risked my life. At that time I did not have anything specific in my mind where I would say I risked my life, and for that reason I didn't know that I did.

The Court: What I mean is, was that one of the services you rendered von Opel, you see, which made it true that you didn't owe him \$20,000, or do not owe his estate today?

The Witness: I would like to put it this way, Your Honor, that even making an agreement under the laws that were not absolutely in order, under the former government, but which in effect took away from the German jurisdiction certain foreign exchange, under the Nazi rules that 1168 would have been something that would endanger any lawyer, whether it was within the rights at that time or not.

The Court: I suppose he is answering your question now, Mr. Burling. Go ahead.

Mr. Burling: If Your Honor please, part of the point of my questioning is that he has testified now he couldn't remember any services, or at one time he remembers any services—after October, 1931. The Nazis didn't come into power until 1933.

The Court: Apparently, he has begun to answer your question, right now. So I say go ahead.

Mr. Burling: Thank you, Your Honor. I didn't understand.

By Mr. Burling:

Q. Will you go ahead and explain what this service was?

A. When the Nazis got into power, all these agreements somehow came under scrutiny by the Nazis. And at that time the Opels discussed with me in detail those negotiations and everything that had anything to do with it, and in fact I gave them a lot of advice how to handle it with the Nazis.

Q. By the way, when did you leave Germany? A. November 24, 1933.

Q. You gave them advice, you say? A. Yes, sir.

Q. What service was it that you say involved the risk of your life? A. Dealing with matters like this was risky, whether you were in the right or not. But I was talking at that time of the Opel family, and I was thinking of something specific, and I am not using that at all, let us say, that specific case, in setting off against this claim.

Q. You knew Mr. Keefer was asking you about services you rendered to Wilhelm von Opel, did you not? A. Mr. Keefer, when we spoke at that time, we spoke for quite some time, and we had a very pleasant talk. It was in no inquisitive way. We were discussing the whole situation and the atmosphere, everything of that kind. And during that conversation, which wasn't fifteen minutes, but—I mean, I will have a hard time saying whether it was one or two hours or three hours—I dropped such a remark, and it wasn't every word for the print. I spoke a lot off the record.

Q. At any rate, you refused to describe the services you had performed for Wilhelm von Opel, did you not? A. To offset my claim, because the claim yet had not been properly prepared to me or presented to me as a claim. And I said to Mr. Keefer that I did not believe that Wilhelm von Opel would make such a claim.

Q. But you did refuse to describe the services? A. On that basis that I have just outlined.

1170 Q. Now, when did you last see Wilhelm von Opel?

A. In April or May, 1939.

Q. Where? A. In London.

Q. Did you perform any services for him after you left Germany in November, 1933? A. Not that I recollect at the moment.

Q. Yet in 1937 the \$20,000 loan had not been written off, had it? A. No. It had not. It had been kept in the status of a loan, for very specific purposes.

Q. And in that year you wrote to Wilhelm von Opel apologizing for not having paid back the loan, did you not? A. Because Wilhelm von Opel needed something for the Nazis, so that he would not sue me; and I told Wilhelm von Opel that if I am sued—I had told Wilhelm von Opel that before—that if I am sued, I will set off all my services, which will show everything that had to go with it. And I had to give him some plausible reason why he would not sue me at this time; so I wrote him this letter.

Q. But you did write him a letter, did you not, in which you acknowledged the debt and said you were not able to pay it? A. Yes, I did.

Q. That is Defendant's Exhibit 29-A. Do you recognize that? A. Yes, I have seen it before. Could I just have a look at it again?

Q. (The letter having been handed to the witness): In this letter you indicated an intention to pay-back the loan, didn't you? A. I did, yes.

Q. And that was false, was it? A. You see, the way it was intended at that time, in case Wilhelm von Opel would request, I would offset it. But this was written mainly for the Nazi situation.

Q. But it was false, even if it was written for the Nazi situation? Is that right? A. What was false, if you will tell me?

Q. Did you or did you not in fact intend to pay back the loan? A. At that time I did not intend to make any definite statement, the way I am making it now.

Q. I can believe that. But did you or did you not intend to pay back the loan? A. I was keeping that open to settle. At the time when Wilhelm von Opel should make any claim against me, I would have set off against it.

Q. You did not intend to pay back the loan at 1172 this time, did you? A. No, I did not.

Q. And so the statement here that you did intend to pay back the loan is false, isn't it?

Mr. Ingoldsby: I object; Your Honor.

The Witness: The statement was absolutely understandable for Wilhelm von Opel, and Wilhelm von Opel knew he was not going to ask me to pay it back.

By Mr. Burling:

Q. Has the estate of Wilhelm von Opel made any claim against you? A. If it has, I don't know about it.

Q. In any event, prior to October 5, 1931, you were not Wilhelm von Opel's tax expert, were you? A. I wasn't his tax expert, but I knew quite a lot about taxes.

Q. As a matter of fact, wasn't the tax work for both the individual Opels and for Adam Opel, A.G., done by a man named Faust? A. That is correct.

Q. Did you, before October 5, have a discussion with Wilhelm von Opel about the remaining 10 per cent of the Adam Opel shares which he held? A. Would you kindly state that again? I didn't get it.

Q. Before October 5, did you have any discussion 1173 with Wilhelm about the 600 shares of Opel stock which he still held? A. Off and on, quite often, yes, because it was very much on his mind.

Q. And you knew, did you not, that those shares were in escrow in New York? A. I drew the escrow agreement myself.

Q. And didn't Wilhelm von Opel tell you he was concerned about foreign exchange regulations, and that he wanted to keep those shares free of foreign exchange regulations? A. I don't know the details of everything that was said. But I do know the whole atmosphere and the gist of our discussions at that time. And there were several things that always came together. One was to protect the family. One was to take care of Fritz. And the other was, then, that the laws were making it difficult, if you didn't act quickly now, then it might be possible that at some date the door was shut and you couldn't get out.

And, in fact, I was making that very clear to Wilhelm von Opel, because I remembered what had happened to many Russians, and I very well knew how important it was to act at the right time.

Q. And Wilhelm von Opel often used a phrase to you, did he not?—which is, "Money isn't everything, that is, unless you have it invested in Switzerland." A. I 1174—don't remember that Wilhelm von Opel said that.

That was a general statement in Germany at that time. It was "Money on loan doesn't make you happy, except you have it in Switzerland," or something like that. I am trying to translate it.

Q. And you told Mr. Keefer that Wilhelm von Opel used that phrase in talking to you, did you not? A. I don't think I did, but it is quite possible. And it is quite possible that Wilhelm von Opel did, because practically it was a joking way of making such statements that went around.

Q. And in the summer and fall of 1931, you considered yourself more or less an expert on foreign exchange matters, did you not? A. Well, I don't have to use the word "expert," but I had to be aware of foreign exchange matters, as a lawyer of a firm that was dealing all the time in exports.

Q. And you knew the term "Auslander" meant, did you not? A. Definitely.

Q. And isn't it true that Wilhelm von Opel said to you that it was convenient that Fritz was an Auslander? A. At the time that Fritz went out, that was already discussed that it would be a very wise thing for Fritz to be outside of Germany and not under the jurisdiction of Germany, as far as the funds were concerned. 1175

Q. When would you say this was first discussed? A. Oh, I couldn't fix any date at all.

Q. At any rate, during, let us say, the week or two prior to October 5, 1931, didn't Wilhelm von Opel say to you that it was a good thing that Fritz was an Auslander? A. I couldn't recall it. But it was a good thing, in the face of the whole situation. I don't recall what Wilhelm von Opel said in detail in that connection. I mean, we all would have been of the same opinion. He didn't have to say that. 1176

Q. Directing your attention to the time around October 5, 1931, was it your opinion that the relationship between Wilhelm and Fritz von Opel was cordial or uncordial? A. As cordial as it always was, in my opinion.

Q. No more or less than it had been, is that it? A. It was a very natural relation between father and son, nothing specific. They were quite friendly as a rule.

Q. You knew, did you not, that Fritz had married against the very strong opposition of his father? A. His father had discussed that in much detail long before Fritz married, with me.

Q. Didn't Wilhelm say he was very strongly opposed? A. He didn't use those words, but the definite impression was that he was not happy about his son going to marry his wife—his later wife.

Q. Did you not say in your deposition that Wilhelm had told you that he was strongly opposed to the marriage? A. I do not recall every word of my deposition, but in gist he was not for it, so he was opposed to it, and I would repeat that.

Q. When did Wilhelm first tell you anything about intending to make a gift to Fritz? A. I think that started almost immediately after the sale, and I could not go back and make a definite statement when that was, and I think it was interrupted through the marriage, that it was further pursued, and afterwards it was taken up again actively.

Q. When was it taken up again actively? A. When?

Q. When? A. Some time before the time it was actually made, and I couldn't tell you whether that was one week or two weeks, or two months.

Q. You do not recall how long a period of time elapsed between the time that you heard the gift was in fact to be made and the time it was made? A. I do not recall how much time elapsed, no.

Q. Casting your mind back to October 2, 1931, you did not go to Mannheim with Fritz to talk to Dr. Hachenburg, did you? A. If I did, I don't remember.

Q. You were not even consulted on that day, were you, about a gift agreement? A. I just stated, I don't remember the dates and details as far as that is concerned. I remember that everything happened before Fritz went to the United States at that time.

Q. But you have no more precise recollection than that? A. As far as whether it was on the second or whether it was on the first that we talked about it, I wouldn't know—probably before Fritz went to Mannheim.

Q. Are you testifying from your recollection now, or an assumption? A. An assumption, I don't recollect that at all.

Q. You were not asked to draft anything until October 5th, were you? A. I don't think I was. Maybe it was discussed before, but that I said I think this is very serious, it should be discussed with Hachenburg first, because I also wanted, felt that there should be a definite opinion about the legality under the foreign exchange laws outside of my own understanding of the laws.

Q. Did you draft an instrument which is Plaintiff's Exhibit 5-A? A. Yes, I did.

Q. And did you draft that unaided, or did you use some earlier draft in preparing this? A. I don't remember that exactly, but I believe there was at that time from Geheimrat — from Dr. Hachenburg some expressed opinion on how the matter should be handled.

Q. Is it not the fact that you used a draft prepared by Dr. Hachenburg? A. Beg your pardon?

Q. Is it not the fact that you used a draft prepared by Dr. Hachenburg? A. Could be quite possible.

1179 Q. And is it not the fact that you did not see that draft until October 5th when it was received in the mail? A. You see, I don't recollect in detail that, but I sure didn't see it, because before it was there—

Q. Is it not the fact that what happened on October 5th was that Wilhelm von Opel and you and Fritz von Opel had a discussion and it was agreed that the Hachenburg draft should be re-written, and didn't you say there isn't time to write a new draft now because Fritz has to leave tomorrow to go to America, and so we will give him a power of attorney and he can use that, to sell the shares to General Motors, and when he comes back we will draw up an agreement and pre-date it, using today's date? A. That is a story that has nothing to do with the facts, because I never would suggest that an agreement be pre-dated.

Q. That was not done? A. Definitely not.

Q. You are absolutely sure? A. I am absolutely sure. I know definitely how this matter was handled, and I also know why I suggested that he take a power of attorney with him. That was done, and it was—

Q. Any questions? A. All right, the question is 1180 answered. I was only trying to say it was drawn and signed on that date.

Q. Thank you. The gift involved, according to your understanding, about \$3,790,000? A. I don't remember what the amount was, but it was a substantial amount.

Q. What did Fritz say to his father when the instrument was executed? A. Do you really expect me to remember what he said at that moment to his father? Well, I can't tell you. That's all I can say.

Q. You do not remember that he said anything at all? A. Whether he said thank you or anything like that I don't remember. Those are not the things that stuck in my mind.

Q. At any rate, Fritz's gratitude was not so effusive that it fixed itself in your mind? A. I don't remember that he fell around the neck of his father. I have absolutely no such scene in my memory. A lot of things have happened since.

Q. Did you not tell Mr. Keefer here that it was entirely possible that the instrument of October 5 was pre-dated? A. I don't think there is any possibility that I made such a statement, because I never in my whole practice pre-dated any agreement.

Q. So you are also morally certain, are you, that 1181 you did not say to Special Agent Kiefer that it was entirely possible that the instrument was pre-dated?

A. I am definite that I didn't say that. It may be that some people pre-date agreements, but I am sure that I never did.

Q. The answer is no to the question? A. I am telling you.

Q. The question is, didn't you say it to Mr. Kiefer? A. No, I know I didn't.

Q. You are morally certain you did not make that statement to Mr. Kiefer, who is sitting at counsel table? A. I stated that, and I repeat it, I did not.

Q. All right. A. If I had made such a statement, it would have been against the facts.

Q. So your testimony is that you drafted this agreement and had it executed on October 5th? A. That is correct.

Q. And on the assumption that the Hachenburg draft was received at Ruesselsheim on the 5th, then your testimony would be that you did the whole thing in one day?

A. That didn't mean very much to me to make an agreement like that in one day. I made the whole option in English and German for General Motors and Adam Opel in one day.

Q. You understood, did you not, Geheimrat Wilhelm von Opel was getting out of Adam Opel? That was the sale of the last of his shares. A. I clearly understood that.

Q. And you had been put in as general counsel of Adam Opel by General Motors? A. That is correct, by the stockholders, you might say, and also by Geheimrat von Opel.

Q. But 80 per cent of the stock was owned by General Motors? A. That is correct.

Q. And you had been a General Motors representative before General Motors bought in von Opel? A. That is correct.

Q. And in a sense wasn't John Thomas Smith your superior? A. You couldn't call him my superior. He was the general counsel of General Motors, and I was the general counsel of Adam Opel, and Adam Opel was owned 80 per cent by General Motors.

Q. Did you cable John Thomas Smith telling him that Geheimrat von Opel had sold out its shares? A. I would not have had any right, when Geheimrat von Opel used me as his counsel in this private matter, to give information to anybody.

Q. So the answer is you did not? A. Well, certainly I did not. I was not—under no obligation whatsoever when I was acting as counsel in a personal matter of Wilhelm von Opel to inform John Thomas Smith of what I had done for Geheimrat von Opel and Fritz von Opel.

Q. You did not feel there was any breach of loyalty, or duty to General Motors to tell them that Geheimrat von Opel had given away his shares, and that Fritz von Opel was coming to New York for the purpose of putting the shares to General Motors? A. I do not even follow the line of thought there, so not only I had no obligation to tell them, but I had an obligation to keep anything that happened, where I was acting as a private counsel, secret from everybody who was not directly involved in that deal.

Q. You knew it would be a matter of grave concern to General Motors that Geheimrat von Opel was getting out, did you not? A. I was—

Q. Will you try to follow my questions.

Mr. Ingoldsby: Your Honor, I object to the last question. The Court: Read the question.

(The pending question was accordingly read by the reporter.)

Mr. Ingoldsby: This question relates to a series, as to whether or not the witness told General Motors
1184 about the gift from Wilhelm to Fritz. I object to the question on the theory that it is completely irrelevant, and I object at this point because it is the first question going into what appears to be a series.

Mr. Burling: I would be glad to make a statement as to the relevancy. This man was a General Motors Lawyer. He had the most obvious obligation to tell General Motors what Wilhelm von Opel had done. He had the most obvious duty to tell them that Fritz was on his way to America to require them to pay \$3,700,000. I try to ask these questions to lay a foundation for arguing that since he did not do what he had a duty to do, there is a probability that the thing was not done on the 5th at all.

The Court: The knowledge of that concern I suppose you

would know as well as he would. It is an argumentative question. I will sustain the objection.

Mr. Burling: I am not sure I understand Your Honor's ruling.

The Court: I am sure it is an argumentative question. You have enough to argue it on already.

Mr. Burling: Very well, Your Honor.

By Mr. Burling:

Q. Is it not the fact that the reason you did not tell General Motors about the gift was because it had not happened yet? A. That is definitely not the fact.

1185 The reason—well, there were a number of reasons.

I have stated one of the reasons, but if Wilhelm von Opel had sold his stock personally, which he might have done, that would also have concerned General Motors, and nobody could have stopped him, so it did not make any difference in that respect.

Q. At the time that you first saw the Hachenburg draft, what led you to think that a draft that you would prepare would be better? A. I didn't think that any draft that I would make would be better, except it would better serve the purposes at this moment when every minute there were new negotiations, new orders coming out, and I felt that under the circumstances quick action was necessary, and my feeling was that the draft of Mr. Hachenburg, which might have been very good, and definitely, doubtless was very good in every detail, because all his things were good in every detail, that they didn't serve this particular purpose at this moment.

Q. Why not? Will you tell us in what way you thought you could improve on the Hachenburg draft? A. I thought that one thing was important at this moment, and that was to get, if Wilhelm von Opel wanted to save for Fritz von Opel the property that was outside of the country, he had to transfer title and had to do that immediately, and that

all other questions of how matters should be handled with respect to that, and in connection with Niess-branch and so on, were secondary questions, and all we had to do at this moment was to take the first step first, and leave the door open for everything else that he wanted to do, or that they wanted to do. And I think my draft did that better.

Q. In other words, the most essential element. A. Agreement of—

Q. Discussion on October 5 was speed, is that right? A. Speed for the transfer of the title from Wilhelm von Opel to Fritz von Opel as a devisen auslaender, to get it out of the jurisdiction of whatever laws there might be coming that hadn't come yet, but could be expected any day.

Q. Do you remember when it was decided that Fritz should take the Europa to America? A. Somewhere around that time.

Q. If speed was of such importance, why not just execute the Hachenburg draft? A. I don't recall the Hachenburg draft, but I was under that impression at that time that that would have been a complication of the whole thing.

Q. Hachenburg submitted a proposed gift agreement, did he not? A. He submitted something at that time that was the basis for my—in some way, also, for my draft.

It could have been the opinion or the agreement.

1187 Q. I show you Plaintiff's Exhibit 8-A, and ask you if this is not the Hachenburg draft which you used in preparing your version.

Mr. Ingolsby: Your Honor, may I make a statement at this point? In view of the fact that this is an incident which transpired about 17 years ago, I don't think that it is quite fair to show only 8 to the witness at this time without also letting the witness know of the summary considerations contained in Exhibit 9.

The Witness: All I could say, this is very probable that I saw that at that time.

By Mr. Burling:

Q. Don't you remember that you used this document? A. It could have been entirely different, and you put it before me as of this date, and probably I did see it at that date. I don't remember that I used it.

Q. Will you examine it, and see if haste was of such importance this instrument couldn't have been typed in final form and executed even more rapidly than your preparing a new draft? A. Well, there must have been some things that didn't appeal to the parties, and that I also thought might take more time than necessary in finishing the transaction, finalizing it.

Q. Can you recall what elements there were in 1188 this instrument that didn't appeal to the parties?

A. I don't know the details. At that time they didn't want to tie themselves down so exactly as it was in here, I suppose, and for that reason it was made in a more general way to leave the decisions open for a time when things were not quite so hectic.

Q. What was said to you by Wilhelm von Opel about a usufruct? A. When this gift was given, you have to remember the time in which it was given. At that time—

Q. I wonder if you would tell me what Wilhelm von Opel said to you. A. If you want me to repeat any words that Wilhelm von Opel said, I can't repeat them, but I know, I am trying to give you an idea of what his thinking was at that time.

Q. I wish you would give us an idea of what he said to you. A. He said he wanted to protect this part of his family, his son, to have something for him that would take care of Fritz, who had been removed from his position in industry and so on.

Q. That is not in response to my question. A. You will be good enough—you are asking me—

Q. I want to know the substance of what Wilhelm said to you about a usufruct. A. And in that connection, as I just now said, although he was taking care of Fritz, he at the same time wanted to protect himself in case Communists or Nazis should take over, or in case of all kinds of contingencies that nobody could definitely specify at that moment. So he wanted to have a possibility of going to Fritz and saying, "Now, I want a usufruct, and here"—and didn't have to beg for it.

Q. So you put a usufruct into the terms of the agreement, is that correct? A. That is correct.

Q. You used the following language, did you not:

"The usufruct in the shares is not assigned to Fritz von Opel, it remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the survivor of them."

When you drafted those words, what did you think their legal significance was? A. This would give Mr. von Opel and Mrs. von Opel the right any time to ask Fritz von Opel to create a property right.

Q. And legally how would that property right be created?

A. By giving co-possession of the shares, just the way that assignments are made.

Q. That is, that Fritz von Opel would deliver possession or co-possession to the parents, and that would create the usufruct, is that right? A. That is my recollection how it would have been done under the German law.

Q. Did you give any consideration on October 5 to the question of who would be liable for the taxes on the income under this usufructuary provision? A. What income, the dividends that would fall?

Q. Any income that would arise from the property. A. The fruits of the property.

Q. Well, I will start over again. It was contemplated

that Fritz would go to New York and put the shares to General Motors, was it not? A. That's correct.

Q. And it was contemplated that he would invest the proceeds of the sale, was it not? A. It was not contemplated how the whole transaction would take place, it was absolutely possible that General Motors would offer General Motors stock; in fact, at the time the escrow agreement was made, that was foremost in the mind of both parties, that that is how it would be handled. I do not recollect that there was any talk about how that had to be handled when he got to New York, whether he would take money or whether he would take stock, or what General Motors would propose in that respect.

Q. In any event, it was contemplated that the Opel 1191 stock was to be transformed into American securities of some sort? A. Well, it was left to Fritz to do whatever he felt he wanted to do in that respect, and probably in detail discussed with Geheimrat von Opel what they were going to do.

Q. It was therefore assumed that some income would be derived from the property? A. Definitely.

Q. What thought did you give on October 5 to who would have to pay the German income taxes? A. I do not recollect discussing that point, but if I had been asked, I would have said that the party who in Germany got any income out of it would have to pay his income tax on it.

Q. Did you look up the law on who has to pay an income tax where there is a usufruct on property? A. I did not look up the law, and I don't think I would have had to look it up.

Q. Well, what is the law where there is a power to create a usufruct in the future? A. There is no law to that effect, as far as income tax is concerned. In what respect do you mean?

Q. I am talking about income taxes. A. I don't understand the question. If you will be kind enough to word it again.

Q. If Wilhelm von Opel had the right to demand
1192 that a usufruct be created, did he have any income
tax liability? A. Under that right alone?

Q. In that situation. A. That right did not incur any
income tax at all.

Q. It did not? A. No.

Q. You did not look it up, though? A. I don't think I
would have had the idea to look that up, whether having
a right would create an income tax if it didn't create any
income, because only income is taxable under our income
tax.

Q. Did you give any thought to the American income tax
law, as to who would be liable? A. I do not remember,
and I don't think it was part of what I was asked to per-
form at that time. But I always gave a lot of thought to
taxes in all my dealings. But I do not recollect in this con-
nection that I gave any thought at all to the American
income taxes. I knew very little about it.

Q. Did you give any thought to whether this instrument
would create any problems in connection with inheritance
taxes or estate taxes? A. Well, I knew definitely that a
gift involved a gift tax.

Q. I am talking about inheritance taxes. A. Well, the
gift tax in that case took the place of the inheritance
1193 tax and the gift tax is very closely connected with
it.

Q. And you didn't look up any law relating either to gift
taxes or to inheritance taxes? A. If there was any ques-
tion that I wasn't clear in my mind on, I would have looked
up the law.

Q. But you did not look up the law? A. I don't know
what I did at that time.

Q. You do not recall having looked up anything at all on
this occasion, do you? A. No, I do not recall it, but I do
recall that when I drew an agreement that I was pretty
clear on what implications it had, and if I was doubtful
about any question I used to look up the books. But 17

years back I do not know whether I looked up any certain and specific paragraph at that time, because I knew much more about the law then than I know today.

Q. But you have no recollection of being concerned about any tax problem of any sort in relation to this gift? A. I was also concerned about tax questions in my mind when agreements were made, so I am sure I was in this case, too, but I am sure that somehow I was satisfied by either, by myself looking up the law, or by getting the information from people who were reliable.

Q. Do you think you consulted any people about 1194 this on October 5, 1931? A. In the first place, I think

Hachenburg expressed an opinion on that, and I am sure that Dr. Faust did, and I am sure that I always checked those things myself when I did them.

Q. Don't you know it to be the fact that both Hachenburg and Dr. Faust said that tax problems were involved here that would require further research? A. I don't remember that.

Q. Were you told that Hachenburg had said he wanted to have a conference with Geheimrat von Opel about the problems associated with this gift? A. I do not recollect, it could be possible.

Q. You inserted, did you not, in Plaintiff's Exhibit 5, the gift agreement, the following statement in the first paragraph:

"It is our common desire that these stocks remain with the male line of our family in order to preserve a personal connection between the bearers of the name of Opel and the work of our father, Adam Opel?"

A. Yes, I mean it is in there, I can see that.

Q. You added it, did you not? A. I don't remember that, but it's in there, and I drew the whole agreement.

Q. And it is not in the Hachenburg draft, which is Plaintiff's Exhibit 8, is it? A. If you say it's not in it, I 1195 don't want to read the whole agreement for that purpose.

Q. I say it isn't, and I show you Plaintiff's 8. At the very time that you recited that the parents Opel desired to keep the Opel stock in the male line of descent of the Opel family, you knew that Fritz von Opel was going to leave the very next day to sell those share, did you not? A. That is correct.

Q. So that is pure sham, is it not? A. It's not pure sham. It had a very good reason at that time.

Q. But it was not true, was it? A. As far as the Opel father and mother were concerned, I don't even know whether at that time what would happen to the stock later was in any way fixed, but they expressed what their desire was, but they don't say that that's what has to be done.

Q. But it was the expectation and the intent of Wilhelm von Opel that Fritz go to New York the next day and sell the shares, was it not? A. Well, that he transfer them to his name, that was the intent of it.

Q. Have you not just testified that it was also intended that Fritz go to New York and sell them to General Motors?

A. To transfer them from the name, from General Motors to him.

1196. Q. Transfer what? A. The stock, this stock.

Q. Opel stock? A. The title, yes.

Q. You drew the power of attorney which Fritz took to New York, did you not? A. That's right.

Q. And that did not say anything about that, did it? A. I don't know what it said.

Q. Will you examine Plaintiff's Exhibit 4-a and say whether that is not the power of attorney. A. This is 2, exhibit 2.

Q. Excuse me.

Mr. Ingoldsby: Your Honor, might we take a couple minutes recess?

The Court: Five-minute recess.

(Accordingly, a short recess was taken.)

By Mr. Burling:

Q. Will you examine Plaintiff's Exhibit 4-A and state whether that is not the power of attorney which you drafted and gave to Fritz von Opel? A. Yes, I drafted that.

Q. Does that indicate that Fritz von Opel was empowered to negotiate to take the Opel shares out 1197 from the escrow agreement? A. Yes, sir.

Q. Was there any discussion of having Fritz take the shares out from under the escrow agreement instead of selling them to General Motors? A. He could have—he still had it open to him what he wanted to do.

Q. Will you answer my question, please: Was there any discussion of it? A. I don't remember that it was discussed in detail what he should do. The main thing was to get it into his own, title transferred to himself.

Q. But as long as they remained German securities, the purpose of getting foreign exchange, getting assets out of Germany would be frustrated; would it not? A. I am not quite clear on that, if a devisen auslaender possessed them.

Q. The Opel shares were not foreign exchange, were they? A. No, and the devisen did not only refer, as far as I remember, to foreign exchange.

Q. How would the purpose which you have described here of having assets abroad in case of a collapse in Germany be served if Fritz held on to the Opel shares?

A. Well, it wouldn't, but he would have had a chance to do something about it, and a collapse, in a collapse, as a rule, the industrial undertakings like an automobile plant 1198 was worth more than money in that country.

Q. But the whole purpose was to get assets abroad. A. To have the title transferred to somebody outside of Germany, and that somebody happened to be the son of Geheimrat von Opel.

Q. In your deposition you said at page 177: "I felt that the only thing that was urgent was to get it out of the

General Motors, and have it under the control of Fritz alone, and nobody else had to decide what would happen to the proceeds of these shares but Fritz von Opel, outside of Germany." Is that correct? A. Yes, that was still my understanding.

Q. In other words, it was your understanding of this transaction that Fritz von Opel was to dispose of the Opel shares, isn't that so? A. That it was wise in my opinion, that that's the way to do it, if he really wanted to protect title for himself and not be subject in any way to German Jurisdiction.

Q. So it was understood by you and by Wilhelm and by Fritz that Fritz was going to sell the shares, is that not true? A. It was understood that Fritz could make his decision when he came over to the United States and could negotiate. He could have negotiated anything.

Q. Yes, he could have. A. He could have also 1199 negotiated, for instance, what was discussed later, and had been discussed earlier, to put the shares on a gold basis. Then a financial collapse in Germany would not have affected the value of the stock, because it could always then ask for General Motors to take him over and pay him on the gold value.

Q. Now will you explain why you inserted the statement that it was the desire of the parents to keep the Opel stock in the male line of descent of the Opel family? A. That would have been their desire, and probably was their desire at that time, that it stayed in the—but it also was good to have that in from the German standpoint, because at a very early date this agreement would have to be placed in front of the tax authorities for taxation, for the gift tax, and then the people who were in Germany, Geheimrat von Opel, and Mrs. von Opel had expressed a desire in this agreement that Fritz von Opel keep it in his name; but he was not under any obligation to do that, although he could have done it if he had received, for instance, some protection by General Motors on the exchange basis.

Q. Is it not the fact that this clause about male line of descent was merely put in to deceive the German authorities? A. I did nothing to deceive anybody.

Q. You understood when you drafted this on October 5, did you, that in order to create a usufruct you had 1200 to have first the agreement to create a usufruct, and second, delivery of possession to the usufructuary.

A. Right.

Q. Is it not the fact that it was contemplated that delivery of the subject matter, or res, would be made to the usufructuary by placing the proceeds of the sale of the Opel stock in a holding company, and delivering the shares of the holding company to an agent of Wilhelm von Opel? A. I don't recollect that in detail. There was a talk of a holding company, and I was not so much concerned about the carrying out later on; as I stated before in that moment, in making the agreement I considered the detail of how this usufruct was going to be handled secondary nature. It was something that between father and son could be arranged at any time when the question came up. The main thing was to create a right for Wilhelm von Opel to ask for the usufruct whenever he felt like it.

Q. Was it not also agreed that the usufruct would in fact be completed through the holding company, as I have described? A. If that is in the agreement, then it was agreed, and if it wasn't, it wasn't agreed. Maybe there was some talk about it, and there was definitely talk about it, but I kind of pushed that aside as something that could be decided later that didn't concern us at this moment.

1201 Q. And it was also agreed, was it not, that if the Opel shares were to be sold, the usufruct would follow into the proceeds? A. I didn't get the last few words. The usufruct would what?

Q. Would follow and attach to the proceeds. A. Once the usufruct is properly established, then it does follow.